Codes as Constitution: The Development of the Biblical Law-Codes from Monarchy to Theocracy

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Abstract

As a result of influence from assyriology and the sociology of law, the Hebrew legal texts have commonly been categorised in recent study as ancient law-codes analogous to the cuneiform codes recovered from the ancient Near East. This has not led, however, to a more constructive and decisive stage in the study of biblical law, and conceptual and methodological problems have been imported from each field. The current interpretative models of the texts, in terms either of legislative, or of non-legislative functions, fail to provide a coherent explanation for their formation.

This thesis is to contrive a fair and neutral approach that can embrace different types of law on the one hand, and make allowance for legal development on the other. Abandoning more casual modern presuppositions about the character of law and of legal systems, the analysis takes as its starting-point the basic concept of law universally accepted by scholars of jurisprudence, and shifts the debate from the old question of whether these ancient codes were “law” or “not law” to questions about why and how these ancient law-codes could have been formulated and functioned in their contemporary societies. The analysis also looks beyond the cuneiform law-codes and concepts of kingship in the ancient Near East, to other early laws developed in different cultures, such as Athens and imperial China.

Against such a historical and conceptual background, the conceptual leap reflected in the Torah from common monarchical law to the constitution of theocracy is examined within the changing socio-historical contexts of Israel itself, from the period of the monarchy through to the Exile. While the initial development of the Hebrew law is thus reconstructed in accord with the general position of monarchical law in ancient empires, the legal breakthrough made in the Torah will be associated with exilic Israel, which transformed the concept of law and the socio-political system for the purpose of reconstituting the nation.

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Abbreviations

AASOR	*Annual of the American Schools of Oriental Research*
AB	Anchor Bible
ABD	*The Anchor Bible Dictionary*
AfO	Archiv für Orientforschung
AJA	*American Journal of Archaeology*
AJCL	*American Journal of Comparative Law*
AnBib	Analecta Biblica
AOAT	Alter Orient und Altes Testament
APD	*Archives de Philosophie du Droit*
ArOr	Archiv Orientální
AS	*Assyriological Studies*
ATANT	Abhandlungen zur Theologie des Alten und Neuen Testaments
ATD	Das Alte Testament Deutsch
BA	*Biblical Archaeologist*
BAR	*Biblical Archaeology Review*
BASOR	*Bulletin of the American Schools of Oriental Research*
BBB	Bonner biblische Beiträge
BETL	Bibliotheca Ephemeridum Theologicarum Lovaniensium
BI	*Biblical Interpretation*
BibOr	Biblica et Orientalia
BO	*Bibliotheca Orientalis*
BWANT	Beiträge zur Wissenschaft vom Alten und Neuen Testament
BZAW	Beiheft zur Zeitschrift fur die alttestamentliche Wissenschaft
CAD	*The Assyrian Dictionary of the Oriental Institute of the University of Chicago.* Chicago, 1956–)
CANE	*Civilizations of the Ancient Near East* (4vols; ed. Jack M. Sasson; New York: Scribner; London: Simon & Schuster, 1995)
CBC	Cambridge Bible Commentary
CBOTS	Coniectanea Biblica. Old Testament Series
CBQ	*Catholic Biblical Quarterly*
CBR	Canadian Bar Review
CHJ	*The Cambridge History of Judaism* (ed. W. D. Davies and L. Finkelstein. Cambridge: Cambridge University Press, 1984)
ChrH	Chronicler's History
CKLR	Chicago-Kent Law Review
ConBOT	Coniectanea Biblica: Old Testament
CRAI	Comptes Rendus. Academie des Inscriptions et Belles-Lettres
DATD	Das Alte Testament Deutsch
DOTP	*Dictionary of the Old Testament: Pentateuch* (ed. T. D. Alexander and D. W. Balker; Illinois; Leicester: InterVarsity, 2003)
DtrH	Deuteronomistic History
ErFor	Erträge der Forschung
FHEAC	Fondation Hardt. Entretiens sur l'antiquité classique
FRLANT	Forschungen zur Religion and Literatur des Alten und Neuen Testaments
FTS	Frankfurter Theologische Studien

HÄB	Hildesheimer ägyptoligische Beiträge
HBS	Herders Biblische Studien
HR	*History of Religions*
HS	Horae Soederblomianae
HSM	Harvard Semitic Monographs
HSMM	Harvard Semitic Museum Monographs
HSS	Harvard Semitic Studies
HTR	*Harvard Theological Review*
HUCA	Hebrew Union College Annual
HW	Hebrew Writing
ICC	International Critical Commentary
IDB	*Interpreter's Dictionary of the Bible*
IEJ	*Israel Exploration Journal*
ILR	*Israel Law Review*
IOS	*Israel Oriental Studies*
JAOS	*Journal of the American Oriental Society*
JBL	*Journal of Biblical Literature*
JBS	*Jerusalem Biblical Studies*
JCL	*Journal of Chinese Law*
JCS	*Journal of Cuneiform Studies*
JESHO	*Journal of the Economic and Social History of the Orient*
JHNES	The Johns Hopkins Near Eastern Studies
JJS	*Journal of Jewish Studies*
JLA	*Jewish Law Annual*
JNES	*Journal of Near Eastern Studies*
JNSL	*Journal of Northwest Semitic Languages*
JPS	The Jewish Publication Society
JPSSDS	JPS Scholar of Distinction Series
JSJ	*Journal for the study of Judaism*
JSOT	*Journal for the Study of the Old Testament*
JSS	*Journal of Semitic Studies*
KuD	Kerygma und Dogma (Göttingen)
LAI	Library of Ancient Inscriptions
LP	*Law and Philosophy*
n.	Footnote
NDH	New Document Hypothesis
NEA	*Near Eastern Archaeology*
OT	Old Testament
OTL	Old Testament Library
OTS	Oudtestamentische Studiën
PAAJR	*Proceedings of the American Academy for Jewish Research*
PAPS	Proceedings of the American Philosophical Society
PBA	Proceedings of the British Academy
RA	Revue d'Assyriologie et d'archéologie orientale
RAI	*Rencontre Assyriologique Internationale*
RB	*Revue Biblique*
RIDA	*Revue Internationale des Droits de l'Antiquité*
RIMEP	The Royal Inscriptions of Mesopotamia Early Periods
RS	Religion and Society
RSV	Revised Standard Version

SAA	State Archives of Assyria
SBLDS	Society of Biblical Literature Dissertation Series
SBLMS	Society of Biblical Literature Monograph Series
SBT	Studies in Biblical Theology
SBTS	Sources for Biblical and Theological Study
SCLH	Studies in Comparative Legal History
SHANE	Studies in the History of the Ancient Near East
SHCANE	Studies in the History and Culture of the Ancient Near East
SLR	*Stanford Law Review*
SOENH	*The Shorter Oxford English Dictionary on Historical Principles*. 4 vols, (prepared by W. Little, reedited by C. T. Onions, London: 1933)
SSN	Studia Semitica Neerlandica
STAR	Studies in Theology and Religion
SWBA	The Social World of Biblical Antiquity Series
SVT	Supplements to Vetus Testamentum
TA	*Tel Aviv*
TynB	*Tyndale Bulletin*
UCOP	University of Cambridge Oriental Publications
VA	*Varia Aegyptiaca*
VT	*Vetus Testamentum*
WBC	World Biblical Commentary
WMANT	Wissenschafltliche Monografien zum Alten and Neuen Testament
ZA	*Zeitschrift für Assyriologie*
ZABR	*Zeitschrift Altorientalische und Biblische Rechtsgeschichte*
ZAR	*Zeitschrift für Altorientalische und Biblische Rechtsgeschichte*
ZAW	*Zeitschrift für die Alttestamentliche Wissenschaft*
ZDPV	Zeitschrift des deutschen Palästina-Vereins

Abbreviations for Codes

CC	Covenant Code (Exod 20:22-23:33)
CL	Covenant Laws (Exod 19:1-24:18)
DL	Deuteronomic Laws (Deut 1.1-30:20)
HC	Holiness Code (Lev 17:-26:)
HL	Hittite Laws
LE	Laws of Eshnuna
LH	Laws of Hammurabi
LL	Laws of Lipit-Ishtar
LU	Laws of Ur-Namma
MAL	Middle Assyrian Laws
NBL	New-Babylonian Laws
PC	Priestly Code (Lev 1:-27:)

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Introduction

Scholarly interests in the legal texts in the Torah in the past were preoccupied by the religious contexts of the texts.[1] This trend , however, has been refined and reoriented by the advances of modern criticism, and by the progress made in the analysis of the world's earliest law codes recovered from the ancient Near East. The interpretation of the nature and social significance of the Hebrew codes is thus methodologically placed in the scope of law, analogous with their predecessors, the cuneiform codes, and with the Greek and late Roman laws.[2] Modern scholars seem to become increasingly interested in the detailed comparison between individual laws originating from different systems;[3] this however cannot be separated from the premises laid down in previous scholarship as regards the comprehensive theories of legal development.

Without realising the paramount importance of legal theories, a number of conceptually and methodologically misleading presuppositions have unconsciously been brought into the field. In the unsolved debate between legislative and non-legislative interpretations of the ancient codes, non-legislative interpretation of the text focuses on the literary characteristics rather than attempting to understand the legal character of the ancient laws, and divorces the texts from the socio-political contexts in which the texts came to be. In contrast to this, legislative interpretation of the texts attempts to reveal the correlation between the authority and the social significance of the texts, thereby promoting the understanding of the purpose of the composition in general and legal history in particular. However, in spite of the

[1] J. W. Marshall rightly points out that the problem with past scholarship is to read Israelite culture and history from the perspective of a religion rather than to view Israelite religion within the larger context of cultural and social forces. See his *Israel and the Book of the Covenant: An Anthropological Approach to Biblical Law* (SBLDS 140; Atlanta: Scholars Press, 1993), 1-4.

[2] Nine ancient Near Eastern law-codes have been recognised. See the summary by R. Westbrook, *Studies in Biblical and Cuneiform Law* (Paris: Gabalda, 1988) 2; idem, "Slave and Master in Ancient Near Eastern Law," *CKLR* 70 (1994-95), 1632-33. For the introduction, transliteration and translation of the cuneiform codes, see Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1995).

[3] B. S. Jackson, "Evolution and Foreign Influence in Ancient law," *ASCL* 16 (1968): 372-73.

plausibility of its premise, legislative interpretation has not yet produced a sophisticated analysis that could explain those non-legislative elements of the ancient codes. This thesis, therefore, aims to seek a fair reassessment of the study of the cuneiform codes with the purpose of reconstructing a general monarchical law system for the analysis of the legal system conceived in the Torah. It would be sensible, therefore, to distinguish fundamental problems inherent in Assyriology prior to advancing a nuanced signification and interpretation of the ancient Near Eastern law.

A. The Imposition of Modern Concepts of Law

The assessment of the nature and function of the cuneiform codes made in non-legislative interpretation appears to have been strongly influenced by modern concepts and definitions of law. The ambivalence of the ancient codes surely deserves further analysis in relation to their socio-political contexts. In the meantime, we should also be aware of the differences between the ancient and modern, especially concerning commonly held norms, material life, and political power structure, thereby making allowance for the peculiarity of the ancient codes. Unfortunately, modern concepts of law, or more precisely the concept of advanced law, have been indiscriminately applied to the analysis of the ancient codes. As an inevitable outcome, the kind of legislative status and value inherent in the ancient codes has been unfairly dismissed in favour of modern systems.[1]

1. The Imposition of Modern Definitions of Law

The starting point of any non-legislative approach is to interpret the internal definition of the codes to determine the nature of the texts (see chapter 2.A.3). However, ancient codes reflect ancient concepts of law and the legal terms coined in them only mirror the characteristics of ancient legal practice rather than the abstract

[1] B. S. Jackson has rightly pointed out that this sort of interpretation "has been affected far more than is usually realised by the commoner models of modern legal systems." See his "From Dharma to Law," *AJCL* 23 (1975): 491.

concepts and terms used in modern systems of law.[1] The well-defined terms of modern legal systems, such as law, legislation, jurisdiction, or application and enforcement of the law, may not be irrelevant to ancient systems and mentality. The fact however remains that the texts of the cuneiform codes exhibit the prevalence of the concept of social justice and the establishment of the administration of judicial justice in the ancient monarchical structure. The definition of the ancient codes that appears in the cuneiform code, especially in the Laws of Hammurabi (LH), makes it clear that ancient concepts of law were directly related to judicial practice, the decisions made by the king or by royal judges. In spite of the generally low stage of development of abstract concepts at that time in Mesopotamia, the Akkadian term *mīšarum*, justice, implies justice in general, while its compound phrase, *dīnāt mīšarim*, judgement of justice, refers to the operation of justice in the courts as a whole (see chapter 3.B.1). Apparently, the terminological differences between the ancient and modern are a matter of cultural difference, created by modern legislature, rather than a problem inherent either in the ancient terms, or in ancient concepts of the practical function of the law within their own legal cultures.

Terminological and conceptual consistency between modern and ancient can only be possible within a single and continuing culture, as exhibited in the legal system in China. The modern term of law in Chinese, *fǎ lǜ*, can be traced back to the recovered early law codes from the Qin dynasty (221-207 BCE).[2] While *lǜ* appeared in Qin Law as the standard term referring to all types of written rules (*qin lǜ*), *fǎ* originally had a broad meaning, denoting the order or rule which was believed in ancient times to exist in and sustain the different units of society and the universe. The compound of and interchange between the two terms became unequivocal as the standard term for law since the formation of Qin law. No distinction is made between the two terms; either term can refer to both abstract and concrete meanings of law at times. Thus neither *fǎ* nor *lǜ* has lost any of its original meaning and function in the modern Chinese legal system in spite of linguistic and conceptual development in the course of history.[3] In this regard, it is easy to understand the difference between

[1] B. S. Jackson clarifies this modern western conception of the "Rule of Law" in his *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16* (Oxford: Oxford University Press, 2006), 23-24.

[2] For an analysis of early statehood and the development of the function and concept of law in ancient China, see Zhiping Liang, "Explicating 'law': A Comparative Perspective of Chinese and Western Legal Culture," *JCL* 3 (1989): 58-63, 68-85.

[3] Compared to English phrases, in which the meaning of a single word may change in a compound phrase, the characteristic of the combination of two single words in Chinese language is that the

modern and ancient systems of law, especially those originating from different languages, cultures and political systems. Therefore, there is no point in expecting codes of law which went out of use more than two millennia ago to reflect concepts of law, linguistic expression of legal thought or the operation of the legal system that correspond to ours.

Moreover, we should allow for a diversity of law in ancient times as well as in modern times. Western systems of law may have been powerful and influential in modernisation and globalisation; they are not the only models in the world. Whereas English and American law are based primarily on precedent, Scots, French and Italian law go back to the principles of Roman law, and legal precedent may be used only as an advisory guide when Roman law does not decide the matter. In the modern context of the variety of religions, political systems, and ethnic norms, the concept of law may imply subtly, yet substantially different, meanings. The position of law and comprehensiveness of law correspondingly represents different levels of democratisation and of legal advance in modern times. Our primary concern, therefore, is not the conceptual differences between ancient and modern law that originate from different cultures, but the practical function of law that may be shared both by the ancients and the moderns.

2. Incompleteness of the Ancient Codes

Since ancient societies were largely ruled by customary rules before the development of written law, the advances of modern law, such as consistency, systematisation and the comprehensiveness required in a modern system, certainly had not yet been achieved in the ancient systems. In fact, the function of written law and the administration of justice in ancient societies appear to have been quite different from those in modern western systems. This, however, certainly does not mean that the ancient codes never functioned as law in society. Instead, how the ancient laws might have functioned should be considered. It seems that rather than regulating everything as a legal basis for the existence and operation of the society as a whole, as is the position of modern law, ancient laws were made to reform or develop certain aspects of existing social practices in order to respond to social

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individuality of each word is normally retained in the combination, and even can be enhanced by the accompanying word. For a historical survey of the meanings of Chinese legal terms, see ibid., 55-91.

demands arising from a newly organised or reorganised society (see chapter 2.B.2). The requirement for systemisation of law, appropriate forms of law, and consistency between individual laws should therefore be regarded as advanced features of law rather than its essence.

Even so, late cuneiform and Hebrew codes, such as the LH, HL and DL in effect exhibit increasing systematisation and comprehensiveness, and there is an apparent trend towards institutionalisation and formalisation of the legal system in state re-organisation (see chapter 2.B.4).[1] Thus, although the ancient codes might not have a great deal in common with modern law and the ancients were unable to define their well-regulated legal system as a code of law, the most important thing is the real character of the law embodied within the literary and procedural appearance of its rules, such as the sanctions by which it functioned and its judicial relevance to society (see chapter 2.B). Therefore, instead of excluding the ancient codes from the field of legal history, the analysis of the ancient codes should consider the texts as intrinsic to the system of law in ancient times. The priority of the investigation thereby should be the relevance of the rules within contemporary society and the correlation between the texts and their political sponsors and patrons.

3. Ancient Codes as Intellectual Property

An assumption has been created in the analysis of the status and function of the ancient codes. The scribal organisations which were presumably responsible for the composition of the codes are seen to be an independent academic institution, which insulated itself from any political influence or intervention. The texts produced by any such institution therefore had nothing to do with royal sponsorship or law enactment, but represented scribal recognition and collation of a social ethos (see chapter 2.A). According to this presupposition, it seems that the ancient scribal organisation enjoyed a tremendous freedom and autonomy that was as great as that in modern western academia, regardless of the plentiful evidence that ancient scribes were a social elite who fulfilled a multiplicity of roles in close relation to state

[1] A. S. Diamond considers that the ancient codes represent different stages of legal development, see his *Primitive Law Past and Present* (London: Methuen, 1971).

administration and communal life.[1] In fact, the composition of each cuneiform code can be associated with a powerful contemporary ruler in Mesopotamia who expanded state territory and population significantly by military conquest, and transformed state administration in accordance with monarchical structure and values in the empire. Since the cuneiform codes unequivocally ascribe their authorship and authority to these historical kings, it is hard to imagine that their codification had nothing to do with royal authority and state administration. One cannot simply take no notice of the textual, conceptual and political link between the prologue-epilogue frame and the rules of the ancient codes.

Unfortunately, the modern presuppositions of academic freedom and independence of academic institutions are not confined to the study of the cuneiform codes. They also appear in a different form in the study of the OT, particularly in the classical source criticism, and this has had an impact on the study of OT law. The New Document Hypothesis (NDH), which is premised on source criticism, explains the inconsistencies and contradictions between the legal texts in the Torah as the literary result of a political compromise made between different leading groups who shared different values and interests in Israelite society. As a result, the Torah addresses the same issues, with different strands embracing different traditions and sources that existed in Israel (see chapter 1.A).[2]

However, the existence of a political opposition sharing constitutional power in an ancient society that had no history of democratic movement would be highly unlikely. Ancient monarchy appears within the modern category of a totalitarian regime, if not a dictatorial one; and oriental kings were evidently above anyone in a monarchical power structure, tolerating no opposition, even though occasionally accepting critical advice from their peers. While the last Israelite monarchy was

[1] L. E. Pearce, "The Scribes and Scholars of Ancient Mesopotamia,"*CANE* 4:2265-78; S. Parpola, "The Man Without a Scribe and the Question of Literacy in the Assyrian Empire," in *Ana šadî Labnāni lū allik--Beiträge zu altorientalischen und mittelmeerischen Kulturen: Festchrift für Wolfgang Röllig* (ed. B. Pongratz-Leisten et al; AOAT 247; Neukirchen-Vluyn: Neukirchener Verlag, 1997), 315-24; A. L. Oppenheim, "A Note on the Scribes in Mesopotamia", in *Studies in Honor of Benno Lansberger on His Seventy-fifth Birthday, April 21, 1965* (ed. T.H. Gütebork and T. Jacobsen. Chicago: Oriental Institute Press, 1965), 253-56; P. Michalowski, "Charisma and Control: On Continuity and Change in Early Mesopotamian Bureaucratic Systems," in *Organization of Power: Aspects of Bureaucracy in the Ancient Near East* (ed. M. Gibson and R. D. Biggs; Chicago: Oriental Institute, 1987), 47-57; G. Visicato, *The Power and the Writing: The Early Scribes of Mesopotamia* (Bethesda, MD: CDL, 2000). D. M. Carr, *Writing on the Tablet of the Heart: Origins of Scripture and Literature* (Oxford: Oxford University Press, 2005), 17-90; W. M. Schniedewind, *How the Bible Became a Book: the Textualization of Ancient Israel* (Cambridge: Cambridge University Press, 2004), 35-47.

[2] D. W. Baker, "Source Criticism," *DOTP*, 798-805.

forced to dissolve under the Neo-Babylonian suzerainty, the concept of monarchy and its long-established totalitarian practice could not have disappeared in a short time. Even under the relatively lenient Persian policy, the interplay between exerting political power and religious teaching appeared unequivocal in the books of Ezra and Nehemiah. The evidence either within the Torah or within those post-exilic texts in fact points to the development of a totalitarian ideology in exilic and post-exilic communities. The Torah reflects a uniform ideology within a recognised framework formulated by those leading groups. It appears that those elites shared different social and scribal responsibilities in society, rather than sharing different opinions in the composition. Thus, the interpretation of the historical development of the Hebrew law in the Torah as a conjoining of different and contradictory views exposes its methodological problem, as well as conceptual misunderstanding of the social function of ancient scribal institutions.

4. Imposition of Modern Court Systems

There is also an analytical logic behind the analysis of the ancient codes. That is, if the text of law was backed by political authority, it must have functioned as normative law in its contemporary society; otherwise, it should be taken as intellectual property without binding force (see chapter 2). This logic has consequently shaped two uncompromising approaches to the study of ancient codes: legislative and non-legislative. Although theoretically, the logic seems fine in terms of a modern definition of law, it goes wrong when the position of the ancient code is directly linked with court proceedings: if the rules had binding power, they were meant to be applied by judges in the courts, citing them in relevant cases and preserving them in the court record. Working from this problematic logic, the key conclusion has been reached in non-legislative interpretation that the codes were not law in a true sense because no rules are quoted in the recovered legal correspondence. The conclusion apparently reflects a modern concept of court systems: the citation and recording of relevant cases is what happens in the English/American system; the citing of general rules in the Roman-derived systems. Unfortunately, the application of the *expected* modern court system to appraise the *actual* procedure of the ancient courts is unreasonable, since it in fact betrays a

positivist approach towards ancient systems.[1] Since there is no way to bring the ancient court back to life and the absence of evidence of either of these kinds can be interpreted otherwise, it would be sensible to explore how the laws could have functioned in the ancient courts if the system was not similar to modern western ones (see chapter 3.C).

Admittedly, it is important to note the fundamental difference between the publication and enforcement of law. The two concepts and procedures are different, yet complete the system of modern law. While the process of law enactment is concerned with the political status of the law, law enforcement is in direct relationship to the actual effect of the law. In practice, the status of the enacted law cannot be abolished without formal procedure; the extent of law enforcement, on the other hand, can be varied depending on the rigidity of the political power that enforces the law (see chapter 3.D).[2] In view of this, the non-legislative approach seems conceptually to identify the legislative status with the actual function of the ancient codes. Once the extent of the expected function of law cannot be proved, the legislative status of the codes is thereby denied.[3] Hence, we need to be as aware of the possible gap between the legislative status and actual function of the codes in ancient times as in modern times.

Moreover, the concept and actual position of law are in close relationship to the political power structure. Given that the social structure and administrative mode in these Mesopotamian regimes were largely those of totalitarian empires, the formulation and administration of the law in this monarchical structure would have been substantially different from those laws that operated in a democratising system. It would be inappropriate, therefore, to assess the social significance of the monarchical law by comparison with the concept of modern western law that developed from the Greek and Roman law.[4] While different models of law emerged from different cultures in the ancient Near East, therefore, a proper understanding of the legal status and social significance of the ancient law should place the texts in

[1] For an analysis of positivist influence on the study of the Hebrew codes, see B. S. Jackson, "Judaism as a Religious Legal System," in *Religion, Laws, and Tradition: Comparative studies in Religious Law* (ed. Andrew Huxley, London: Routledge Curzon, 2002), 34-48. For the problems with Jackson's analysis of the Hebrew law in the Torah, see Chapter 1.D.2.

[2] An instance can be seen in the law concerning business and employment on Sundays in Britain. It is still valid politically, but evidently much less enforced since the Labour party came to power in 1997.

[3] Particularly see R. Westbrook's distinction between legislation and academic treatise. "Cuneiform law codes and the Origins of Legislation," *ZA* 79 (1989): 202.

[4] This is true of most continental systems, except the English system.

their own social, political, economic, and even religious contexts in which the codes were formulated and functioned.

B. The Trouble with Oversimplified Generalisations

Unfortunately, the conceptual misunderstanding in the analysis of the ancient codes has led to methodological misapplication. The most serious problem arising in the studies can be seen when analogies are drawn between two comparable texts without considering the different contexts in which they emerged or the different functions that they served (see chapter 1.B). Generalisation as a method can be used to make an analogy between two similar cultures or similar aspects of two different cultures, and this has proved effective in illuminating facets or models which cannot be archaeologically reconstructed. But oversimplified generalisations may tend to dismiss certain distinctive features of a compared text or model. The analysis of the cuneiform codes has certainly yielded a rich literary and cognitive understanding of the systems of law in the ancient Near East. However, since the information pertaining to Hebrew legal history in the Torah is framed within demonstrable narrative settings, the reconstruction of a basic legal model from Mesopotamian societies would be constructive and illuminating to the legal system in monarchical Israel. The similarity of the monarchical structure, the Amorite cultural and political interaction between the two nations, and the Israelite political interaction with Phoenicians, Assyrians and Babylonians can make the analogy feasible and essential in the interpretation of the formation and corresponding social significance of the Hebrew codes. On the other hand, one should be aware that rather than in a monarchical system, the Hebrew codes had been placed in a new ideological and socio-political framework in the Torah. Correspondingly, the interpretation of the purpose of the reformulation and the function of the present texts has to be in accordance with social and conceptual development made by the time of the finalisation. Thus, Israel's own contexts should be taken into account for the formulation and reformulation of the Hebrew codes as well as the general legal culture cultivated in the ancient Near East.

Unfortunately, in spite of the academic interaction between Assyriology and

biblical studies in recent years, analogies drawn between the two fields reveal a rather uniform pattern. Those scholars who accept a legislative interpretation of the cuneiform codes assume that the codes found in Hebrew literature reflect legal history in Israel. Those who prefer non-legislative interpretation of the codes equally take the Hebrew codes to be a result of scribal compilation of Israelite traditions without legal force. Although this trend represents initial academic dissent from the claim of the uniqueness of the Hebrew legal texts in critical scholarship, the straightforward analogy made in the comparison has overlooked not only the literary differences between the compared texts but also the socio-political contexts in which the texts were formulated. Instead of simply applying a known model of ancient law for the reconstruction and interpretation of the Hebrew law, we should endeavour to show how and why a common monarchical code could have been transformed into constitutional law in the Torah.

C. Shifting the Agenda

The demonstration of the problems occurring in the interpretation of the ancient codes and the improper analogy made between two legal systems no doubt necessitates the reassessment of the study of ancient Near Eastern law as a whole. While the analogous method remains methodologically applicable to the study of the Hebrew codes, we should be aware of the differences between different legal cultures and the internal development within a single legal culture. This surely calls for a critical approach to reconstruct the actual socio-political settings for the composition and finalisation of the Hebrew codes in Israel, thereby possibly revealing the purpose of the reformulation and presentation of the codes in the Torah.

For this task, it is necessary in the first chapter to review current approaches in the analysis of the legal texts in the Torah in order to contrive an appropriate interpretative approach for the study. I will first point out specific problems in the application of source criticism and form criticism in the study in order to eliminate existing methodological misconceptions and misapplications. Then I will turn to the analysis of each interpretative model perceived in current approaches. The applicability of each model from either the legislative or the non-legislative approach

is thereby evaluated in the light of renewed understanding. While neither current approach seems to explain the formation and social function of the ancient codes fairly and thoroughly, a balanced and appropriate approach will be introduced to the study, which attempts to reconstruct legal evolution or development in ancient times from practical legal practices in a self-contained community to a centralised and formalised state system.

Via reassessing both the literary characteristics and the character of the cuneiform law, I will in chapter three present what is the legal character of the ancient laws in chapter two. In order to further the analysis in a broader ideological and socio-political context in Mesopotamia, I will associate the discussion of the codification of the ancient codes and the general position of law in a monarchical power structure with the common concept and exercise of human kingship, thereby reconstructing a monarchical system of law for the study of Hebrew law.

Since the Hebrew codes exhibit certain literary and conceptual similarities with the cuneiform codes, I thus explore both internal and external factors for the formation of an early Hebrew law code in chapter four. In spite of the existence of long and various contacts between Hebrew and cuneiform cultures, I will place the legal development and corresponding codification of a law code in Israel at a juncture wherein the legal demands arising from the development of Israel's own statehood would have been met by state reorganisation and influenced by direct and intensive interaction with those empires that could inherit and develop the cuneiform legal traditions. The final locus of the codification, however, will be placed in the Judean monarchy after the fall of the northern monarchy.

While legal development is understood to be a gradual process in Israel, the codification of a law code is seen as the culmination of such development. In this regard, the codification of the origin of the Hebrew codes is believed to have resulted *from*, rather than *in* the reforms launched by those powerful kings in Judean monarchy, in which the position of law would not possibly go beyond the monarchical concept of law prevailing in the ancient Near East. In this general context of monarchical law, I will thus re-evaluate the narrative of law in the HW in relation to the codification of Hebrew law in Israel and place the transformation of monarchical law into divine law in the Torah in the exilic period, wherein the loss of monarchical sponsors and patrons of the law would lead to the reformulation of the Hebrew codes in a new ideological and socio-political framework in the Torah.

In chapter five, I will further explore the ideological correlation between the law and the theocratic framework in the Torah. By tracing back the development of the concept of Yahweh's kingship in Israel in relation to the rise of Yahwists as an influential political and religious entity in Israel, I will demonstrate that a significant development of the concept of Yahweh's kingship took place in the exilic period. As a better alternative to the destroyed monarchy, the patron god of the nation was thereby perceived to be the very king of the broken nation, who took on the qualities of a human king and ruled the nation by his law. Thus, the framework of Yahweh's kingship merged with the constitutional position of the Hebrew law in the Torah.

In order to understand how the concept of Yahweh's kingship could have exerted this function in exilic Israel, I will turn to the analysis of the formation of the concept of covenant in Israel and its relationship to the law in the Torah. By demonstrating that as an exilic response to the political destruction of both northern and southern monarchies, the concept of covenant is expounded to be the form of the relationship between Israel and its patron god, Yahweh. While the pre-exilic relationship between Israel and Yahweh is interpreted as an old covenant, the new covenant, which is stipulated by the law in the Torah, is understood as a new beginning for the Judean exiles. Covenantal commitment to the sovereign-subject relationship would thus intensify the rigidity of the law in order to reorganise the broken nation with recognised systems and values.

The final chapter will be dedicated to the analysis of the constitutional position of the Hebrew law in the new socio-political system in order better to understand the position of the law in relation to the governing system perceived for the exilic Israel in the DL. I will demonstrate how the linked changes were designed in accordance with the new ideological and administrative system in the code. The legislative position of the Hebrew law is thus directly associated with the publication of law and the learning system designed for education in law in the code. The conclusion will be finally reached that the law and governing system perceived in the Torah served both ideological and practical purposes for the reconstitution of the exilic Israel. Correspondingly, a utopian interpretation of the text would be inappropriate in this regard; and a legalistic interpretation of the text in early Judaism would also overlook the historical development of the law in Israel on the one hand and the changes of social circumstances in late times on the other.

Chapter One
The Biblical Law-Codes in Recent Scholarship

Introduction

The legal texts in the Torah have puzzled modern scholars with regard to their nature and actual function in Israelite society, and a variety of methods and corresponding assumptions have been employed in analysing the texts. The Torah is thus read historically, comparatively and literarily; and each approach has stimulated several interpretative models. While historical readings attempt to trace the various linguistic and ideological strata within a text back to logical contexts of composition and redaction, literary readings focus on the present form of the text, and particularly emphasise interpretation of the purpose of the composition as a whole. Comparative readings, on the other hand, search for analogous texts amongst the other compositions of the ancient Near East, in order to illuminate the Hebrew codes, and have concentrated in particular on the cuneiform law-codes from Mesopotamia. The study of the written Hebrew legal tradition has thus been refined and enriched by insights both from critical biblical interpretation and from the analysis of ancient Near Eastern law, while the philosophical, historical, sociological, and even anthropological aspects of law have become increasingly important in the reconstruction and interpretation of the legal systems reflected in the Torah. Nevertheless, through this significant interplay between biblical study, sociology and Assyriology, certain difficulties and false suppositions have been imported into the discussion from each field. In order to contrive an appropriate analytical approach, it is necessary to identify those problems.

A. Source Criticism and Historical Reading

Source criticism has achieved the status, within the broader field of biblical interpretation, of an almost classical method of a historical reading of the text. Instead of attempting to comprehend the final form of each work as a whole, it aims to reconstruct the literary process of development by which the text evolved, and to link the component layers to socio-cultural contexts. In the study of the Pentateuch, of course, several principal sources (J, E, D, P) are usually identified on the basis of linguistic and conceptual variations in the text.[1] The details are much discussed, and the nature of the sources still the subject of considerable debate, but in this general form of the hypothesis, perceived inconsistencies within the Torah are broadly construed either as the result of literary activity in separate periods, or as the work of groups with separate outlooks. The present form of the Torah can thus be seen as, in effect, the literary reflection of a compromise made between those groups or writers within Israelite society, who were in a position successively to achieve preservation and acceptance of their own changes to the text. These groups are often perceived to have operated at different critical phases of the nation's history, and to have held different conceptual positions, particularly in regard to the catastrophe which befell Judean society with the fall of Jerusalem and the Babylonian exile in the early sixth century BCE.[2]

The history of Hebrew law, as reflected in the separate law-codes, is then reconstructed within the context of this broader interpretative framework. The origin of the Covenant Code, for example, is linked to the combination of the J and the E materials, with the new 'JE' text commonly dated between the end of the ninth and eighth BCE, so that it reflects the social structure and requirements of the early monarchic community. The origin of the book of Deuteronomy, on the other hand, with its core Deuteronomic law-code, is naturally linked to the D source, which is in

[1] For a convenient outline, see Baker, "Source Criticism," 798-805.

[2] R. N. Whybray, *The Making of the Pentateuch: A Methodological Study* (JSOTSup.53; Sheffield: Sheffield Academic Press, 1987), 17-34; B. M. Levinson, "The Right Chorale: From the Poetics to the Hermeneutics of the Hebrew Bible," in *Not in Heaven: Coherence and Complexity in Biblical Narrative* (ed. J. P. Rosenblatt and J. C. Sitterson; Bloomington and Indianapolis: Indiana University Press, 1991), 131-42.

turn taken to be a reflection of the political and religious positions which stimulated King Josiah's reform. These codes are believed to have been further supplemented by the extensive priestly redaction and composition which brought the Torah to more or less its present form, with substantial texts concerning cultic and ritual matters in Exodus, Leviticus and Numbers. The divisions and inconsistencies between and within the various legal texts are correspondingly interpreted as cognitive and textual reflections of development within the community.

While this theory seems to provide a logic for the historical and literary process giving rise to each unit of legal text in the Torah, it embodies the misleading assumption, as Marshall has correctly noted, that particular literary styles, vocabularies and themes are unique to single traditions created by specific scribal groups.[1] It further disregards the existing integrity of the different traditions in the complex, and creates a virtual conceptual and political barrier between the texts or within each text.

One aspect of this is to be found in the neat division imposed between Deuteronomic and priestly writings in the Torah, which has combined with simplistic assumptions about the social role of the priestly authors and editors. Since the texts assigned to them are principally dogmatic and ritual in scope, [2] the priestly scribes are assumed to have had no political and legal interest in society beyond those areas, but this is consistent neither with the administrative functions of priestly professionals found elsewhere in the ancient Near East (see Introduction A.3. n.2), nor with the activities attributed to priests (most famously Ezra) in the post-exilic community. Changes in social structure and political identity after the fall of Judah meant that priests and Levites seem gradually to have gained an enhanced status in the exilic communities, and they may well have been involved in every aspect of communal administration. It is important to recognise, therefore, that the priestly redaction of the Torah did not only involve the inclusion of new material geared to ritual concerns, but that it also involved acceptance and inclusion of the existing materials. In this regard, source-critical emphasis on the separation of texts by origin tends to create an artificial division, where the texts themselves actually illustrate the union and incorporation of different traditions.

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[1] Marshall, *Israel and the Book of the Covenant*, 15-16.

[2] Jacob Milgrom has observed that H is uninterested in the organisation of the state and kingship. See his *Leviticus 17-22: A New Translation with Introduction and Commentary* (AB 3A; Doubleday: The Anchor Bible, 2000), 1414-16.

Conceptually, the implication of two opposing, co-existent parties in ancient Israel, reflected in ideologically distinct texts, sounds rather unconvincing in the ancient eastern context. Political and ideological rivalries between leading groups are largely a modern product of democratisation, rather than a characteristic of more totalitarian societies like monarchic Israel. In this regard, the juxtaposition of different types of text in the Torah can be more positively interpreted as co-operation, rather than contention, between the deuteronomic and priestly groups. The anonymity and interweaving of the sources, indeed, indicates that their editors had no intention of making them separable, or of linking them to particular groups. And the preservation of different legal texts, in particular, suggests that successive writers accepted the legacy of legal texts created by their predecessors, while seeking to reformulate the framework within which they were read. More broadly, the association of all the legal texts in the Torah with divine authority, rather than human, in effect exhibits the intention to create a single, supremely authoritative document, thereby convincing of, and obliging people to conform to, the rules.

In order to avoid the difficulties which can arise from an over-emphasis on the separation of sources in source-critical study, it is important to pay due respect to the present structure of the presentation of the legal texts, while retaining an awareness of the process that gave rise to it. Rather than seeing the Torah as an atomistic compilation of different sources, or as the result of multiple redactions which had no single coherent purpose, it seems better to think in terms of a single document, the various layers or sections of which arose through a complicated literary process, but served a uniform and collective purpose at each stage.

B. Form Criticism and Comparative Study

The comparison of texts from across the ancient Near East has played a role in many aspects of modern biblical criticism, but has, arguably, proved to be most effective in the study of ancient systems of law.[1] While the evidence from the soil of

[1] See Alan Watson, *Legal Transplants: An Approach to Comparative Law* (originally published in Edinburgh: Scottish Academic Press, 1974; 2nd ed. Athens; Georgia: the University of Georgia Press, 1993), 1-20.

Palestine itself is insufficient for the reconstruction of Hebrew legal culture and systems, the prolific discoveries from Mesopotamia have thrown a new light on Hebrew literature in general, and on Hebrew law in particular.[1] It is important, however, to be clear about the aims and limitations of such comparative scholarship, and Meir Malul has made a useful division between contextual and typological studies.[2] The aim of contextual comparison is to prove a historical connection between two cultures both belonging to a particular geographic and temporal zone, allowing the scholar to reconstruct unknown aspects of one from known aspects of the other through the assumption of a direct link or a shared heritage. The aim of typological comparison, on the other hand, is to create a theoretical model, by extracting essential or universal elements from a known system, and then using this model to comprehend and fill the missing parts of a system which is assumed to be similar.[3] These approaches both have a part to play in facilitating our analysis of the formation and function of the Hebrew codes; a number of problems, however, have occurred in the practical application of the comparative approach.[4] These in part involve also the widespread use of another classic interpretative method, form criticism.

1. Form *versus* Function

Form criticism arose as a methodological response to the perceived inadequacy of source criticism in biblical study. Texts are taken to manifest an underlying 'form', which shapes the content and presentation of each text which belongs to that form, but which has itself been shaped, perhaps at an earlier oral stage, by the basic needs and functions which gave rise to it. By identification of the key elements which make up a given form, it is supposed that those needs and

[1] See J. W. Rogerson's review, *Anthropology and the Old Testament* (Oxford: Basil Blackwell, 1978), 1-21.
[2] According to Malul, the former is premised on the assumption of a historical connection or a common tradition between the compared societies, while the latter deals with the comparison between geographically and chronologically unrelated societies or cultures. See Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (AOAT 227; Kevelaer: Butzon & Bercker, 1990), 13-19. For more information about a contextual approach, see W. W. Hallo, 'Biblical History in its Near Eastern Setting: the Contextual Approach in *Scripture in Context: Essays on the Comparative Method* (ed. C. D. Evans et al; Pennsylvania: The Pickwick Press, 1980), 1-26.
[3] For the summary of the various applications of the comparative method as six trends, see Malul, *The Comparative Method*, 21-36.
[4] For a general review of the problems, ibid., 37-85.

functions may be inferred, and aspects of the society itself identified. Although it poses many problems, not least in terms of falsifiability, form criticism has been widely used in the study of biblical law, and has provided the generic categories into which individual laws are commonly sorted: it has traditionally offered access to the pre-literary history and life-setting of those laws.[1]

It is a corollary of form-critical presuppositions that if one text closely resembles another, then they must possess the same or analogous forms, and so have derived ultimately from the same or analogous life-settings. Correspondingly, form-critical methods are sometimes employed in a sort of typological comparison: if the genre or form of a text, whose function remains ambiguous or controversial in scholarship, appears similar to a known model, the function of the text is thereby assumed to be the same as that of the model text. Whatever the merits or faults of this in principle, it has frequently led in practice to oversimplified analogies made between texts which are similar in some respects, but not necessarily in all. A typical instance in Assyriology is the analogy made between the cuneiform omen texts and law-codes: since both present their individual items using a conditional, casuistic construction, it is asserted that the laws therefore must have shared the same scribal origin as the omens, and accordingly had a similar function in society. Since the omen texts have been identified as proto-scientific treatises, so the law-codes have correspondingly been viewed as treatises on law in ancient academia, without any binding, legislative force in contemporary society (see chapter 2.A). This offers little by way of a satisfactory explanation for the prologues and epilogues of some law-codes, but it also, more importantly, addresses similarities at the level of presentation and syntax, while ignoring significant differences at the level of content.

Such types of analogy, and corresponding differentiation, have also been applied to the study of Hebrew law-codes within biblical scholarship. The logic used is simple: if the rules in a code are formulated with different forms, they must have originated from different social spheres and functioned differently in society, whereas if they share a form, they share an origin. Such logic has been particularly elaborated in Albrecht Alt's analysis of Hebrew law. This again focuses on basic syntactic similarities or differences, with the multiple styles of the Hebrew rules pressed into two categories: apodictic and casuistic. The unconditional character of

[1] For a convenient introduction to the method, see G. M. Tucker, *Form Criticism of the Old Testament* (fourth ed.; Philadelphia: Fortress Press, 1976), 1-17.

the apodictic rules is taken to imply that they are simply expressions of divine will, and thereby belong to the religious law, originating from a cultic context in the pre-state period. The casuistic rules, on the other hand, are interpreted as typical case law, dealing with specific disputes in the secular courts of the Israelite state.[1] Alt's observations were taken up by many scholars, with his idea of divine, apodictic laws proving particularly attractive to those who were keen to emphasise the uniqueness of the Hebrew codes.[2] The concept of divine law, however, as Daube has rightly pointed out, has been proven to be legally, historically and ethnologically wrong.[3]

Although the antedating of the Hebrew codes was dismissed in later critical interpretation, [4] its literary premise remained without conscious rejection. The attempt to make an analogy between the codes and wisdom tradition based on certain literary similarity in effect follows the same premise and logic. [5] The functional difference between two types of literature has been overlooked in such superficial analogy. One piece of internal evidence should be sufficient to dismiss the claim for the non-legislative position of the legal texts: while the Torah claims the legal texts as divine legislation, no such claim is made for the wisdom literature. Certainly, each type of writing had its origin and function in the same society; the subject overlaps between them are not surprising. The common interests and values shared both in the Torah and the wisdom literature reflect the recognition of the norms within the society. Yet, each in fact addresses the same issues for different audiences from a different pespective, and with a different purpose. The opening address in both texts, characterised with the term שמע, appears to be addressed to the "son" in a domestic setting in the wisdom instruction, but to "Israel" as a single political entity in the promulgation of the law in the Torah (see chapter 7.E.1). The real concern, therefore, should be neither with common interest, nor with literary similarity, nor even

[1] A. Alt, *Essays on Old Testament History and Religion* (trans. R. A. Wilson; Oxford: Blackwell, 1966), 79-132; trans. of *Kleine Schriften zur Geschichte des Volkes Israel* (3 vols; München: Beck, 1953, 1959, 1964).
[2] G. Mendenhall also believes that Israelite law has its own special form and sees the apodictic laws to be the absolute commands of Yahweh, the sovereign of the covenanted people, without civil machinery to enforce them in early Israelite community. See his "Covenant," in *IDB* 1:714-23.
[3] David Daube, "Some Forms of Old Testament Legislation," in *Collected Works of David Daube: 3 Biblical Law and Literature* (ed. C. M. Carmichael, SCLH; Berkeley: Regents of the University of California, 2003), 343-45.
[4] R. Westbrook, "What is the Covenant Code?" in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (ed. B. L. Levinson, JSOTS 181; Sheffield: Sheffield Academic Press, 1994), 16-17.
[5] C. M. Carmichael, *The Origins of Biblical Law: The Decalogue and the Book of the Covenant* (Ithaca, NY: Cornell University Press, 1992), 22- 73.

Thus, literary style and function represent two different facets of a composition. One is concerned with the outlook of a text, the other with the content of the text. An idea or a principle can be dressed in different forms without losing or altering its substance and function (see chapter 2.A.4). Accordingly, literary characteristics of a text as a form of expression cannot be the decisive element to conclude the function of the text, but the content of the text (internal evidence) and its actual social function (external evidence) should determine the nature of the text. In this regard, the literary form of a rule can be connected with the applicability and efficiency of the rule, it cannot be related to the nature of the rule since the ancient legal system appeared different from ours (see chapter 2.A.4 and chapter 3.C.3).

2. Genre *versus* Content

Since comparative study of ancient law-codes involves an essential linguistic and literary comparison between two parallel texts, another corollary associated with form criticism is a conceptual misunderstanding created in the analysis of the genre and the content of a text. That is, via identifying the genre of a text, the function of the text is thereby concluded. The Hebrew law-codes are thus identified as treaty documents in line with a favoured treaty thesis in modern scholarship. In fact, the treaty has wide variations in the ancient Near East.[2] A number of scholars have noted that although the evidence of the identical curses in the Esarhaddon treaties and in the epilogue of the DL may indicate a direct influence of treaty literature on the latter, the content of the code, however, diverges from the common treaty patterns. While conventional stipulations in a treaty are largely dressed in apodictic forms, stressing the allegiance and obligation of the subjected party towards its suzerain, the

[1] Gershon Brin, *Studies in Biblical Law: From the Hebrew Bible to the Dead Sea Scrolls* (JSOT 176; Sheffield: Sheffield Academic Press, 1994), 52-73; D. Patrick, "The Rhetoric of Collective Responsibility in Deuteronomic Law," in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom* (ed. D. P. Wright, D. N. Freedman and Avi Hurvitz; Winona Lake, Indiana: Eisenbrauns, 1995), 421-36.
[2] J. McCarthy, *Treaty and Covenant*: *A Study in Form in the Ancient Oriental Documents and in the Old Testament* (Rome: Biblical Institute Press, 1981), 27-153.

central part of the DL is, nevertheless, dedicated to civil, cultic and criminal laws.[1] Thus, while the genre of the code cannot be fully identified as any known treaty, it would be dangerous to jump to the conclusion that the text should be interpreted as a type of treaty. S. D. McBride has rightly concluded that Deuteronomy, while deeply indebted to the traditions of the ancient Near Eastern literature, is not identical to any of them in form, content or purpose.[2]

On the other hand, we should be aware that both a treaty and a law code are structured with tripartite sections, encasing the central corpus within a prologue-epilogue frame. It would not be inappropriate, in this regard, to say that the basic tripartite structure was widely applied for the formulation of both law-code and different types of treaty in the ancient Near East. Thus the literary similarities of two texts can be interpreted as a result of the application of the common literary devices acquired in ancient scribal training. As A. K. Bowman and G. Woolf have noted, writing should be seen to be a transferable technology and the ancient literati to be competent in creating their own preferable text by using a wide variety of texts. [3] While the genre of two seemingly similar texts cannot decide the nature of the text, perhaps based on the function inherent in the content of the text, the genre of the text can be concluded. Accordingly, the starting point of our analysis will not be the genre alone, but the content of the text as well.

3. Text in Context

Another common misleading element in comparative literature is a comparison made between two seemingly similar texts without investigating the social and literary contexts in which each text came to be. A most serious misleading procedure created in Assyriology is the disassociation of the text from its socio-political context either exhibited or indicated in the text. Modern legal study

[1] M. Weinfeld, *Deuteronomy and Deuteronomic School* (Oxford: Clarendon Press, 1972), 146-57. Also S. Parpola and Kazuko Watanabe, *Neo-Assyrian Treaties and Loyalty Oaths* (SAA 2; Helsinki: Helsinki University Press, 1988). For a detailed review of past scholarship on this issue, see E. W. Nicholson, *God and His People: Covenant and Theology in the Old Testament* (Oxford: Clarendon Press, 1986), 56-82.

[2] See his "Polity of the Covenant People: The Book of Deuteronomy," in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (ed. D. L. Christensen; Winona Lake, IN: Eisenbrauns, 2005), 229-44.

[3] Alan K. Bowman and Greg Woolf, "Literacy and Power in the Ancient World" in *Literacy and Power in the Ancient World* (ed. Alan K. Bowman and Greg Woolf; Cambridge: Cambridge University Press, 1994), 6.

demonstrates the paramount importance of political power structure in relation to the position and actual function of law in modern societies. A stark contrast can be made for the position of law in a democratic system and in a totalitarian regime; and a subtle difference can be also discerned from different legal systems within a similar political structure (see Introduction A.4). This vital factor, however, has been completely ignored in both fields, while the social system in which the cuneiform codes emerged appears in the transitional period from city-state to centralised monarchy, and the Torah indicates that a social and ideological transformation took place in Israelite society, from a monarchic system to a highly organised, yet self-contained theocracy (see chapter 7).

Evidence in fact suggests that although the cuneiform codes appear as the literary and legal predecessors of any code in the vast area of the ancient Near East, Greek and Hebrew codes developed their own distinctive ideological and legal and social systems in accord with their own social and cognitive development in each formative period. The political systems established in classical Greece represented a democratising tendency, which is described by modern scholars as the first well-documented democracy in the world.[1] Surely, the legal system in Athens could have developed to a more advanced level than its predecessor in the ancient Near East. The distinction of each legal system, therefore, cannot be divorced from the particular socio-political changes made in each associated society; and the reconstruction of each legal system has to be connected with its political power structure in which the law-codes came to be and functioned.

Moreover, one should also be aware that comparison made between the biblical texts and their parallel texts suggests that apparent literary resemblance between two texts can be superficial, and obvious differences can be deliberately made for the propaganda of one system.[2] In this regard, a seemingly similar aspect in two parallel texts might have been imposed for a different purpose and an apparently different aspect might have shared a similar purpose. Such an intention in the Torah has to be understood in a particular socio-political circumstance by the time of textual finalisation, since Israelite monarchies experienced political destruction and

[1] E. W. Robinson, *The First Democracies: Early Popular Government Outside Athens* (Stuttgart: F. Steiner, 1997). R. Thomas has noted that Drakon established laws for Athens in the late seventh century, Solon left an extensive written code for Athens (c. 600). The first attested law on stone from Dreros in Crete can be dated between 650-600 BCE. See his *Literacy and Orality in Ancient Greece* (Cambridge: Cambridge University Press, 1992), 65-68.
[2] See Malul, *The Comparative Method*, 31 and n. 21.

the peoples were forced to confront cultural assimilation and political suppression during the exilic periods. A proper understanding of the distinctions of the Hebrew codes, therefore, should consider those concomitant factors in the composition and redaction. Thus, it would be methodologically wrong and cognitively naïve to conclude the purpose of the composition merely via textual comparison without further investigating historical, political and religious factors behind each formation.

C. The Legislative Approach

The fundamental debate in the study of both cuneiform and Hebrew law-codes has cultivated current approaches towards the interpretation of Hebrew law. In spite of lacking efficient interplay between the two fields in early biblical scholarship, the primary debate between the historical and utopian interpretation of the Hebrew law appears similar to the heated debate going on in Assyriology. Both are fundamentally concerned with legislative and non-legislative status of the texts in each associated society. Within the two definitive approaches, certain comparisons are made between individual laws from the two systems without being aware of the basic premises in each field.

The legislative approach both in biblical scholarship and Assyriology, is premised on the assumption that the ancient codes were normative law and were enforced by their contemporary political authority. A pioneering work of socio-historical interpretation of the Hebrew codes was mainly carried out by those German-speaking scholars who applied both biblical source criticism and sociology in the field.[1] The underlying premise for this legislative approach is that written law is a reflection of legal development in response to social needs, especially during social transition from a traditional clan-based community to a monarchic system. Correspondingly, the formation of the Hebrew codes is mainly placed in a monarchic context with an exilic redaction. This has yielded certain interpretative models in the reconstruction of the legal development in Israelite society.

[1] See the review by A. D. H. Mayes, *The Old Testament in Sociological Perspective* (London: Marshall Pickering, 1989), 7-11.

1. The Priority of Religious Rules

A number of scholars have reconstructed an early Israelite society as a federation of different tribes and considered those religious rules in the CC as early Hebrew law originated from such religious community. G. E. Mendenhall used the treaty model, especially the Hittite treaty, to interpret the covenant as the social and religious form of early Israel, binding together those ethnically homogeneous groups in Palestine based on a common allegiance to the same deity, and centered by a central sanctuary that served as a symbol of their unity.[1] In this form, the CC is understood as a treaty between Yahweh and early Israel, distinguishing Israel with *Gemeinschaft* from *Gesellschaft* in the monarchic period.[2] This sociological approach towards early Israelite society was further developed by biblical sociologists and anthropologists.[3]

Such reconstruction of an early covenantal Israel, however, is heavily reliant on biblical information without further scrutinising the text in the light of archaeological evidence.[4] Later scholars, such as Halbe, did not let the idea of the priority of religious rules go easily, despite placing the incorporation of sacred law within secular law in the monarchy.[5] The problem with early sociological

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[1] G. E. Mendenhall, "Covenant Forms in Israelite Tradition," *BA* 17 (1954): 50-76; and "'Change and Decay in All around I See': Conquest, Covenant, and 'The Tenth Generation'," *BA* 39 (1976):152-157.

[2] G. E. Mendenhall, *The Tenth Generation: The Origins of the Biblical Tradition* (Baltimore: Johns Hopkins University Press, 1973), 174-97; idem, "The Conflict between Value Systems and Social Control" in *Unity and Diversity: Essays in the History, Literature and Religion of the Ancient Near East* (ed. H. Goedicke and J. J. M. Roberts; Baltimore: Johns Hopkins University Press, 1975), 169-80; idem, "Social Organisation in Early Israel," in *Magnalia Dei*, *The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al; Garden City, New York: Doubleday, 1976), 132-51. Also see W. Beyerlin, *Origins and History of the Oldest Sinaitic Traditions* (trans. S. Rudman; Oxford: Blackwell, 1965); 1-170; trans. of *Herkunft und Geschichte der Ältersten Sinaitraditionen* (Tübingen: Mohr, 1961); J. Bright, *A History of Israel* (London: 1960), 140-75; idem, *Covenant and Promise: The Future in the Preaching of the Pre-exilic Prophets* (London, 1977), 31-43; D. R. Hillers, *Covenant: The History of a Biblical Idea* (Baltimore, 1969), 68-71.

[3] N. K. Gottwald, The Tribes of Yahweh: *A Sociology of the Religion of Liberated Israel, 1250-1050 B.C.* (Maryknoll, NY: SCM Press, 1979); and N. P. Lemche, *Early Israel: Anthropological and Historical Studies on the Israelite Society before the Monarchy* (VTSup 37; Leiden: Brill, 1985). For the critique of the work of Mendenhall and Gottwald, see J. Milgrom, "Religious Conversion and the Revolt Model for the Formation of Israel," *JBL* 101 (1982): 169-76.

[4] For a critical review of past scholarship, see Robert B. Coote and Keith W. Whitelam, *The Emergence of Early Israel in Historical Perspective* (SWBA 5; Sheffield: Sheffield Academic Press, 1987), 11-26. For the review of socio-historical reconstruction of Israel in relation to OT, see R. Albertz, "Social History of Ancient Israel," in *Understanding the History of Ancient Israel* (ed. H. G. M. Williamson, PBA 143; Oxford; New York: Oxford University Press, 2007), 347-54.

[5] J. Halbe, *Das Privilegrecht Jahwes Ex.34.10-26: Gestalt und Wesen, Herkunft und Wirken in vordeuteronomische Zeit* (FRLANT 114; Gottingen: Vandenhoeck & Ruprecht, 1975). For an English

interpretation of the Hebrew law appears to be lack of an effective interplay with Assyriology on the one hand, and taking an uncritical approach towards biblical texts on the other.

2. Theological Transformation of the Hebrew Codes

Later scholars, such F. Crüsemann, better combined critical methodology in the biblical field with sociology in their analysis. Based on M. Noth's understanding of the development of the Hebrew law,[1] Crüsemann suggests two basic texts for the composition of the CC. One is from the northern monarchy concerning the veneration of one God; the other a law-code formulated in Jerusalem parallel with the ancient Near Eastern legal traditions. The laws in Exodus 32-34 are understood to underlie the significance of the veneration of one God and the scenario of the golden calf to originate from the northern monarchy under the leadership of King Jeroboam I (1 Kgs 12:25-10). The message of forgiveness in the narrative of cultic renewal after the calf episode was to reassure the nation about its future with Yahweh in the aftermath of the political destruction of the monarchy.[2] Functioning as its parallel, the altar law at the beginning of the legal corpus of the CC signified the importance of the nearness of Yahweh and should be seen as the key to a proper understanding of the whole Sinai discourse. The first part of the code (Exod 20:22-26) is thus considered to result from reshaping, expansion, and incorporation of a northern legal heritage in the hands of the Jerusalem jurisdiction.

The *mishpatim*, on the other hand, are understood as a part of ancient Near Eastern legal traditions being integrated into the code with minor corrections. The laws of slavery and the monetary system are seen as an implicit reflection of certain social problems arising from the monarchical system, which received a strong criticism from those contemporary prophets, and as an explicit exhibition of political resolutions to maintain economic balance and to protect those most vulnerable social groups (22:20f, 23:9, 22:24f). Thus, the CC combined the theological heritage of the

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review of his work, see Anne Fitzpatrick-Mckinley, *The Transformation of Torah from Scribal Advice to Law* (JSOTSup 287; Sheffield: Sheffield Academic Press, 1999), 24-30.

[1] M. Noth, *The Laws in the Pentateuch and Other Studies* (Edinburgh and London: Olive & Boyd, 1966), 85-103.

[2] F. Crüsemann, *The Torah: Theology and Social History of Old Testament Law* (trans. A. W. Mahnke; Edinburgh: T&T Clark, 1996), 109-200; trans. of *Die Tora: Theologie und Sozialgeschichte des alttestamentlichen Gesetzes* (München: Kaiser Verlag, 1992).

northern monarchy, the judicial system established in Jerusalem, and prophetic critique. The codification is understood to take place in later Judean monarchy, approximate to Hezekiah's reform, in order to forestall the meting out to the southern monarchy of the judgement received by the northern.

Following Wellhausen who assigned the entire book to King Josiah,[1] the book of Deuteronomy is considered to be a state law-book, whose statutory laws were enforced by Judean royal authority.[2] Most portions of the DL are seen to be pre-exilic social agendas and the governing system regulated in the code was the combination of wide-ranging political and public institutions of the monarchy under Josiah's leadership.[3] In spite of the supposition that the priestly group worked together with the high court in Jerusalem before the Exile and were in a leading position to respond to the demands of the exiles during exilic periods, Crüsemann does not think that the priestly group continued previous traditions, neither the radicality of Deuteronomic tradition, nor the traditions embraced in the CC.[4] Thus all past laws were no longer valid to the post-exilic community. Only the priestly composition, including the HC, became effective to those Jews who lived either in Yehud or in the Diaspora, providing guidelines for those who were coping with particular social circumstances. The inconsistencies and contradictions within the Torah are interpreted as an anachronism: the invalid pre-exilic legal traditions became the roots of the later law without being corrected. Thus, the priestly writings totally replaced the other past codes by establishing a central concept of the unity of God with the combination of cultic, legal, theological and ethical requirements in the composition.[5]

Apparently, Crüsemann's analysis reflects the distinctive stand of source criticism which creates a virtual ideological division between the Hebrew codes. In spite of the fact that Crüsemann understands that priestly finalisation had lifted all

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[1] Julius Wellhausen, *Prolegomena to the History of Ancient Israel* (trans. J. Sutherland Black and Allan Enzies, with a reprint of the article "Israel" from the *Encyclopaedia Britannica*, prefaced by W. Robertson Smith; Eugene, Oregon: Wipf and Stock Publishers, 2003), 33; trans. of *Prolegomena zur Geschichte Israels* (2d ed.; Berlin: G. Reimer, 1883).

[2] Crüsemann does not think the several verses in Deuteronomy assigned by other scholars as P acceptable. See his *The Torah*, 281, 284. For a different view of priestly redaction on the book, see E. Otto, "The Pentateuch in Synchronical and Diachronical Perspectives: Protorabbinic Scribal Erudition Mediating Between Deuteronomy and the Priestly Code," in *Das Deuteronomium zwischen Pentateuch und Deuteronomistischem Geschichtswerk* (ed. E. Otto and R. Achenbach, FRLANT 206; Göttingen: Vandenhoeck & Ruprecht, 2004), 14-35.

[3] Crüsemann, *The Torah,* 201-75, 280-81.

[4] Ibid., 285-89.

[5] Ibid., 289-301.

past state law to a new level, no substantial meaning is given to the uplifting; and the DL is considered no more than a legal heritage, ineffective to the exilic Israel.

Moreover, Crüsemann does not read the scenario of King Josiah in 2 Kings critically, but simply follows the NDH which assumes the entirety of Deuteronomy as the product of Josiah's reform. Since the original state law-code have been reframed in the Torah, the meaning and the function of the code has to be understood in the new framework. Instead, Crüsemann simply abandons all past law-codes in favour of priestly writings, regardless of the fact that the Torah considers the DL as the new constitution for the future generation. A good interpretation of the history of Hebrew law and of the correlation between the legal texts in the Torah, therefore, has to be illuminated by general legal contexts in the ancient Near East and the particular socio-political contexts in which the texts came into being and were further elaborated and modified in their present form (see chapter 4.E).

3. Religious Elements Complementing State Law

A number of biblical scholars have maintained a judicial origin for the CC and considered the religious elements in the code to be a late addition to original state law-codes.[1] E. Otto understands the ancient codes to be neither practical codes in a direct relationship with the courts, nor a collection of popular wisdom, but a codification of state laws in response to social demands. Thus the codes mark a significant step in the legal history of Israel, introducing state laws to an existing judicial system, in order to exert royal judicial power in particular, and maintain social hierarchy created by the monarchy in general.

The development of Israelite state law is understood to go through several major stages: from collecting case laws from rural courts in the first stage[2] to making new laws in the second stage, in response to social problems and needs arising from

[1] L. Schwienhorst-Schönberger considers that the origins of the casuistic sections (Exod 21:12-22:17) contained neither sacral nor theological elements, but originated from legal administration influenced by the ancient Near Eastern legal traditions. See his *Das Bundesbuch (Ex. 20, 22-23, 33): Studien zu seiner Entstehung und Theologie* (BZAW 188; Berlin: W. de Gruyter, 1990). For an English review, see Fitzpatrick-McKinley, *The Transformation of Torah*, 38-45.

[2] E. Otto, *Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des antiken Israel: Eine Rechtsgeschichte des "Bundesbuches" Ex XX – XXIII 13* (Leiden: E. J. Brill, 1988), 9-14. He considers the rules dressed in casuistic forms as the earliest laws originated from rural courts as simply dispute settlement. See his "Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law," *JSOT* 57 (1993): 3-22.

structural changes made in society.[1] Religious elements were added to the state law in the third stage, in order to enhance the authority of the laws.[2] Correspondingly, legal development is first seen from simple dispute resolution to the imposition of the sanctions prescribed by state law, which resulted in the combination of the different types of rules: the rules prescribing rough restoration and the rules demanding double restitution in the CC (Exod 21:12-22:27; see the contrast between 22:15 and 21:33).[3] The development of state law from its judicial function to a religious framework is placed in the eighth century, in Judah, by priestly or levitical circles.[4] When the social conditions for the observance of the laws in the early monarchy were gradually encroached by the monarchical system and values, the state laws were theologised and placed under the authority of Yahweh, thus curbing the tendency towards social differentiation that led to the deprivation of disadvantaged groups, and to judicial corruption in the hands of the privileged classes. This resulted in the combination of criminal and civil laws with the theological theme that Yahweh would act as king for social injustice (22:27),[5] and in the formulation of certain new laws, including the laws in apodictic form in the CC (22:28-23:12), such as protecting legal institutions and procedures, regulating religious and moral obligations, and encouraging the care for the underprivileged population (21:2-11; 22:21-26; 23:4-25).[6] Thus the combination of sacred and secular laws with ethical demands became the characteristic of the CC.[7] The law-code was then further developed as covenant law by Deuteronomists, who gave a prologue (20:22-26) and epilogue (23:13-33) to the code, and the code came to be centred on Yahweh's kingship and the emphasis on Israel's obedience to Yahweh.[8]

Otto's understanding of pre-exilic priestly work in the Tetrateuch has in effect reconstructed a missing link for the continuum of priestly work in the composition of the Torah on the one hand, and made an allowance for a multi-role of the priestly class in state administration on the other. Compared to his predecessors, his interpretation of the development of the Hebrew law in monarchical Israel is associated with the monarchy itself, rather than with the pre-Israel community.

[1] Otto, *Wandel der Rechtsbegründungen*, 21-23, 30-32, 69-75.
[2] Ibid., 17-19
[3] Ibid., 13-14.
[4] Ibid., 43-44.
[5] Ibid., 17-19, 30-32, 40.
[6] Ibid., 46-51.
[7] Ibid., 49-51.
[8] Ibid., 58-60, 72.

Moreover, in accord with the legal development understood by the generality of legal historians, he has also escaped the pitfalls created in Assyriology. Neither following a non-legislative interpretation of the ancient codes, nor simply agreeing with legislative interpretation, he has found his own unique way to interpret how the Hebrew codes developed politically, conceptually and textually in response to socio-political development of the Israelite monarchy.

Otto is also engaged in the discussion of the formation of the DL and its correlation with the Tetrateuch. While placing the finalisation of the Pentateuch in the Achaemenid period,[1] he considers the origin of the DL to be the product of King Josiah's reform, as proposed by de Wett.[2] The formation of the DL is understood to be in relation both to King Josiah's reform and to exilic understanding of Yahweh's relations with Israel. The present form of Deuteronomy is interpreted as a counterpart of an Assyrian treaty, resulting from reformulating original state law made in Josiah's reign. The treaty model is seen to interpret Yahweh's sovereignty over the broken nation, and by no means to diminish the function of the code as state law, but places the code in a new and dynamic framework.[3] The analogy drawn between Yahweh's sovereignty over Israel in the Deuteronomy and an Assyrian treaty reflects his early dating of the code in relation to the monarchy. The treason law in chapter 13, which is dated in King Josiah's time in line with the Assyrian suzerainty, appears rather questionable. Since the code was reformulated mainly for the restoration of exilic Israel and certainly in consideration of exilic circumstances (see chapter 4.E and chapter 7), his interpretation of this law and other laws in the code in relation to the concept of Yahweh's kingship cannot be placed in a monarchical context, but would be better seen in an exilic context.

Thus, in spite of the claim that the code was reshaped for the post-exilic community, Otto's understanding of the concept of the Hebrew law mainly ties to the monarchy. In other words, the underlying factor in the recognition of the legislative position of the DL was its royal origin, rather than the powerful recognition created

[1] E. Otto, "Das Deuteronomium als Archimedischer Punkt der Pentateuchkritik auf dem Wege zu einer Neubegründung der de Wette'schen Hypothese" in *Deuteronomy and Deuteronomic Literature* (ed. M. Vervenne and J. Lust; Leuven: Leuven University Press, 1997), 321-39.

[2] For a critical review of de Wett's work, see M. Weinfeld, "Deuteronomy: The Present State of Inquiry." *JBL* 86 (1967): 249-62; repr. in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (ed. D. L. Christensen; Winona Lake, IN: Eisenbrauns, 1993). 21-35.

[3] E. Otto,"Von der Programmschrift einer Rechtsreform zum Verfassungsentwurf des Neuen Israel: Die Stellung des Deuteronomiums in der Rechtsgeschichte Israels," in *Bundesdokument und Gesetz: Studim zum Deuteronomium* (ed. G. Braulik, HBS 4; Freiburg; New York: Herder, 1995), 92-104.

by the exilic elite. Accordingly, his interpretation of the formation of the DL has to rely on the account of Josiah's reform in the HW in order to create a royal provenance for the constitutional position of the code. Accordingly, the exilic transformation of the Hebrew codes into a new conceptual and socio-political system doesn't occupy a central place in his analysis for the understanding of the concept of the Hebrew law in general and individual laws in particular. For this reason, my analysis of the formation of the Hebrew codes, especially the DL, will place more emphasis on the purpose and the significance of exilic transformation of the legal texts than their monarchical origins.

Summary and Conclusion

The legislative interpretations represent a socio-historical approach towards the formation of the Hebrew codes in Israel's own socio-political contexts. The formulation of the origins of the CC and DL are thus associated with state administration with the purpose of coping with the social problems arising from a society that developed from a kin-based community to a centralised monarchy. The different interpretative models reflect certain fundamental problems either inherent in the source criticism or in the form criticism. Thus, in spite of the importance of the royal origins of these Hebrew codes pointed out in this approach, those codes have been reframed in a new conceptual and socio-political framework in the Torah. Accordingly, the interpretation of the position and social significance of these codes has to consider the social context in which the codes were finalised. Moreover, the investigation of Hebrew legal history has to be enlightened by recent developments made in Assyriology and legal history in order better to understand both the commonplace and the distinction of the system formulated in the Torah.

D. The Non-legislative Approach

The interplay between Assyriology and biblical study in recent years has shed a new light on the study of OT law and led to methodological and conceptual revolutions in the biblical field (see Introduction). However, in spite of the diversity

and controversy within the field of Assyriology, those scholars who are engaged in both fields mainly represent the non-legislative approach towards the ancient codes. This has subsequently had an imbalanced impact on the biblical field. While the non-legislative approach in Assyriology considers the law-codes having no binding force, the utopian interpretation of the Hebrew codes is concerned with the practicability of the rules. Although each perceived model for the literary process of each composition may exhibit its own logic and particularity, the basic premise is still within the category of the non-legislative approach.

1. Law-Codes as a Second Source of Law

R. Westbrook's work represents the main stream of Assyriology regarding the nature and function of the cuneiform codes. Premised on the assumption that the cuneiform and Hebrew codes are a reflection of existing social practices, the ancient codes are considered as a second source of law, bearing no binding criteria for contemporary judges. By making an analogy between cuneiform omen texts and law-codes, he identifies both types of writing as academic treatises, resulting from similar scribal literary activity, without royal sponsorship.[1] As treatises in law, the law-codes could not have been a source of law binding judges in the ancient courts, even though the rules derived from decisions in special cases. They, best of all, occasionally functioned as consultative documents for judges to resolve difficult cases.[2] The casuistic form, which is the main literary feature of the cuneiform rules, is taken as a deficient formula in expressing abstract concepts, and an indication of immaturity in legal thinking.[3] Even those later law-codes, such as Assyrian and Hittite laws, which exhibit increasing maturity in legal thinking and the firm establishment of the legislative status of written law in each society, are not considered to be state law, enacted by their contemporary rulers.[4]

To contend this non-legislative position, Westbrook further disassociates the corpus of the rules from their prologue-epilogue frames that articulate royal enactment of the codes, and regards the frames as a literary device designed to

[1] Westbrook believe that both went through a similar intellectual and literary process.
[2] R. Westbrook, "Biblical and Cuneiform Law Codes," *RB* (1985): 247-64; idem, *Studies in Biblical and Cuneiform Law* (Paris: Gabalda, 1988), 2-3.
[3] Westbrook, *Studies in Biblical and Cuneiform Law*, 3-5; idem, "Cuneiform Law Codes and the Origins of Legislation," *ZA* 79 (1989): 218-22.
[4] Westbrook, "Biblical and Cuneiform Law Codes," 256.

enhance the status of the scribes who composed the codes. Although he considers that some rules derived from royal judicial decisions and might have been applied in the courts at times as precedents, these rules shared no judicial authority as statute law and precedents (see chapter 3.B.2).[1] Thus Westbrook has denied both the legislative status and function of the ancient codes altogether.

Nonetheless, the underlying presupposition behind his analysis is the assumption that the nature of the legal system in the ancient Near East was essentially static over a thousand years; no royal reform or new law would thus be necessary for those Mesopotamian societies. Accordingly, the codes would be a conduit of the tradition rather than a reflection of substantive reformation made in the regimes,[2] and the differences between codes reflect conceptual preference rather than legal evolution or revolution.[3] This has further led him methodologically to disregard historical reading of the text of the codes. With the supposition that there was a single, coherent 'common law' that embraced Mesopotamia and Israel, the diverse legal texts in the Torah are seen as a coherent corpus produced by Israelite scribal scholarship on the academic basis established in their cuneiform forebears. Thus the Hebrew legal texts in the Torah are neither a mass of internal contradictions as the result of legal and literary development, nor a conceptual monolith from a literary reading of the text, but a reflection of a single, coherent common law, upon which different opinions were expressed.[4]

The complexity and ambivalence of Westbrook's analysis deserves a close scrutiny, however. First of all, the assumption of the existence of a 'common law' might be theoretically valid within an ancient single legal system in which each code was formulated to complement those unwritten traditions. However, the relationship between the common law and each law-code would have to be further clarified. Apparently, Westbrook's undefined common law has posed a conceptual confusion between the "common law" and written law. If this common law can be interpreted as commonly held values and customs, such as natural law in the modern category, it would be ethically and legally impossible for different peoples living in the vast land of the ancient Near East over three millennia to have shared a single, coherent

[1] Westbrook, "Cuneiform Law Codes and the Origins of Legislation," 216-17.
[2] Westbrook, 'What is the Covenant Code?," 20-28.
[3] Westbrook, *Studies in Biblical and Cuneiform Law*, 7.
[4] Ibid., 9-135; idem, "What is the Covenant Code?," 32-36.

"common law."[1]

In fact, the emergence and development of written law marks a significant legal development from a society habitually ruled by customary rules to a centralised monarchy in which state laws were formulated as a legal basis to reorganise society administratively and politically. Well established traditions might have continued to be upheld in a new imperial system, but could also have given way to the new system or been adopted in a new form within the new political power structure (see chapter 2.B). It is not surprising, therefore, that Westbrook's position and analysis has encountered formidable disagreement from both biblical scholars and legal historians. While Otto demonstrates intensive legal development reflected both in the cuneiform codes and CC,[2] Levinson manifests the evidence of intensive legal revisions and interpolations made within the Torah.[3] This significant textual evidence cannot be explained as literary variations or a conceptual preference, but as a substantial legal and textual development against the background of social changes over years. Westbrook's method is thus considered no different from rabbinic exegesis.[4]

Moreover, the conceptual separation made between the prologue-epilogue frame and the corpus of the rules also reflects his attempt to separate the rules not only from the text, but also from their socio-political contexts declared in the frame. D. Patrick rightly points out that a better interpretation of the conceptual differences among the ancient codes would be illuminated by the political, economic, and religious upheavals behind the formulation.[5] Thus, rather than a virtual "common law" shared in the vast land of the ancient Near East, the ancient codes reflect the attempt to regulate "common legal interests" for a newly established system. Accordingly, both legal development and preference could have been reflected in a code; there is no need to use one to rule out the other. Our task therefore is not to abstract a coherent "*common law*" from those ancient codes, but to uncover a

[1] S. Greengus, "Some Issues Relating to the Comparability of Laws and the Coherence of the Legal Tradition," in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (ed. B. L. Levinson; Sheffield: Sheffield Academic Press, 1994), 60-87.
[2] E. Otto, "Aspects of Legal Reforms and Reformulations in Ancient Cuneiform and Israelite Law," in ibid., 160-196; idem, *Rechtsgeschichte der Redaktionen im Kodex Esnunna und im "Bundesbuch"* (Göttingen: Vandenhoeck & Ruprecht, 1989).
[3] B. M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford; New York: Oxford University Press, 1997).
[4] B. M. Levinson, "The Case for Revision and Interpretation within the Biblical Legal Corpora," in *Theory and Method in Biblical and Cuneiform Law*, 37-59.
[5] D. Patrick, "Who is the Evolutionist?" in ibid., 152-59.

coherent *motive* and *logic* behind those apparent inconsistencies and contradictions within a code.

2. From Wisdom to Law—the Formation of the CC

As a legal professional, B. S. Jackson has done a great deal of work on law in general and the Hebrew law in particular. His latest and most comprehensive work concerning the formation of the CC demonstrates the interplay and correlation between Assyriology and the study of OT law.[1] Being aware of the inadequacy of Westbrook's non-legislative approach, Jackson perceives a model of wisdom-laws as a legal trend for the formation of the CC. The ancient code is interpreted as a *reduced* form of popular norms that were originally circulated *orally* and were applied for dealing with local disputes. Reading the wisdom-laws, thus demands the capacity to image the judicial situations in which the norms were orally applied for dispute settlement.[2] The purpose of reducing the customary rules in a written form, however, was not to provide particular precedents for case dealing; rather, it aimed at a didactic function, to pass the values on to a wider society.[3]

In this form, the early written rules reflected in the CC mark the development of jurisdiction from private self-executing justice to a regulated court system. The private disputes, which used to be settled on the basis of the *riv* by two involved parties, thus moved to a system whereby such disputes were submitted to a third party adjudication.[4] Popular wisdom is believed to be applied in such early courts before reduction to written form as a law-code. The manner of the application of those wisdom rules was like rhetorical persuasion, rather than restricted literal application of the rules as the laws in the modern courts, via means of negotiation

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[1] Jackson, *Wisdom-Laws*, 10-16.

[2] Jackson develops semiotic theory based on the studies of linguistic and cognitive development and considers that orality and literacy in the legal text both reflect different modes of thought. The former, orality, involves the semiotics of speech behaviours, producing face-to-face communication, including intonation and the body language created by the speaker, in order to allow the listener to understand the message in the same social context and knowledge as the speaker. The latter, literacy, however, represents intelligent cognition, seeking to express all that is necessary for the reader's understanding, in order to fill the gap of space and time between writer and reader. See his *Studies in the Semiotics of Biblical Law* (JSOTSup 314; Sheffield: Sheffield Academic Press, 2000), 93-113.

[3] For the concept of wisdom-laws, also see J. Blenkinsopp, *Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism* (rev. ed; Oxford: Oxford University Press, 2003), 90-93.

[4] For a detailed analysis of ancient legal terms, see P. Bovati, *Re-Establishing Justice* (Sheffield: Sheffield Academic Press, 1994), 30-166.

rather than of legal aggression or compulsion. The *mishpatim* are thus interpreted as predominantly wisdom-laws, mainly reflecting the practices of the earlier, oral, self-executing justice.[1] As "practical wisdom," these rules had no binding force in the courts.[2]

Premised on the supposition that the characteristic of Israelite jurisdiction was a combination of local customs and divinely guided intuitions,[3] the formation of the wisdom-laws in the CC is thus seen to be involved in three major literary levels in accordance with the legal development from subject dispute resolution to formal adjudication, from a charismatic to a rational judicial manner. At the initial stage, the written form of the popular norms, defined as dispute resolution, appears quite informal, dressed in ordinary language with rare use of technical terms, and no distinction made between apodictic and casuistic rules.[4] The second stage represents legal institutionalisation by Deuteronomists who drafted the code with the knowledge of cuneiform literary artifices and imposed it for a didactic purpose (21:20-21, 26-27).[5] This would include adopting royal liberation edicts, the laws regarding homicide, non-fatal injuries, and some form of divine legitimation in the code. In spite of the popularity of wisdom-laws in local and central court, these laws were not enacted by any king, but considered to be scribal codification of a variety of rules. Thus Deuteronomists are not considered to be the authority that could provide institutional means for adjudication.[6]

The final stage is seen to be the work of the priestly editors who shaped the code as covenant law and categorised the rules as the תורות and חקים. The code was meant to be taught to the judges as reflected in the associated narative (Exod 18:20-21) and might have been used by them as the basis of their decisions. However, the code was mainly for teaching, to pass on the values to generations, rather than to provide dispute resolution.[7]

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[1] Jackson, *Wisdom-Laws*, 30.
[2] Jackson, *Studies in the Semiotics of Biblical Law*, 70-92.
[3] Jackson, *Wisdom-Laws*, 42-69, 411-18; idem, "Ideas of Law and Legal Administration: A Semiotic Approach," in *The World of Ancient Israel: Sociological, Anthropological and Political Perspectives* (ed. R. E. Clements; Cambridge: Cambridge University Press, 1989), 185-202; idem, "Legalism and Spirituality: Historical, Philosophical, and Semiotic notes on Legislators, Adjudicators, and Subjects," in *Religion and Law: Biblical-Judaic and Islamic Perspectives* (ed. E. B. Firmage et al; Winona Lake: Eisenbrauns, 1990), 243-61.
[4] Jackson, *Wisdom-Laws*, 387-406, 431-45.471-72.
[5] Ibid., 406-30, 453-64.
[6] Ibid., 473-77
[7] Ibid., 477-78.

Jackson's reconstruction of legal development in ancient egalitarian society seems to reflect a general anthropological reconstruction of ancient legal system.[1] Yet, there are a number of issues that need to be further discussed in relation to the purpose of the codification. The starting point is that we should realise that the popularity of the ancient proverbial wisdom is not based on its vocal or literary form, but the essence of the norms that shaped the common sense of right and wrong in a particular culture. Moreover, since common values can be expressed in both abstract and concrete form, and the norms could have been passed on from one generation to another via different forms of communication, oral form cannot rule out the other means of passing values.[2] Social practice in effect best preserved established norms in a regular and predictable form as demonstrated by anthropological analysis.[3]

When one says that ancient people dealt with a dispute arising from the community according to wisdom laws, it would not necessarily refer to those idiomatic proverbs cited in the ancient courts as the laws in a modern court. Be that as it may in certain circumstances, it would be more likely that the common sense of fairness functioned as a kind of criterion in the mind of the ancient arbitrators and judges. In this regard, the wisdom laws in written form cannot be defined as a reduced form of oral wisdom, but a reflection of well recognised values and practices in a particular society. An appropriate interpretation of the wisdom laws therefore should place the rules in their relevant social-cultural contexts, rather than the context of oral communication in an ancient court as suggested by Jackson.

Further, while certain wisdom laws might have originated from commonly held values, not all rules either in the cuneiform or Hebrew codes can be directly ascribed to such wisdom-laws. Some rules were apparently connected with royal

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[1] C. R. Fontaine, *Traditional Sayings in the Old Testament: A Contextual Study* (Sheffield: Almond Press, 1980), 28-170.

[2] S. Niditch points out the interplay between written text and orality in general while considering oral form as pre-literary. See her, *Oral World and Written Word: Orality and Literacy in Ancient Israel* (London: SPCK, 1997), 108-130; W. M. Schniedewind, on the other hand, particularly notes that writing plays a prominent role in Deuteronomy while having no central role in the dissemination of the priestly work. He proposes that the laws were introduced and sustained as a written text by the Deuteronomic school. See his "The Textualization of Torah in the Deuteronomic Tradition," in *Das Deuteronomium zwischen Pentateuch und Deuteronomistischem Geschichtswerk* (ed. E. Otto and R. Achenbach, FRLANT 206; Göttingen: Vandenhoeck & Ruprecht, 2004), 153-67. For a review and analysis of the development of writing in exilic and post-exilic periods, see Joachim Schaper, "Exilic and Post-Exilic Prophecy and the Orality/Literacy Problems," *VT* 55 (2005): 324-42.

[3] David Clines has pointed out that modern practices of political system, of education and media, of customary behaviours in families and of social events can created and transmit ideological systems. See his *Interested Parties: The Ideology of Writers and Readers of the Hebrew Bible* (JSOTSup 205; Sheffield: Sheffield Academic Press, 1995), 14-15.

administration, such as the status laws and the decrees of debt-release, recognised by both Westbrook and Jackson. In spite of various authoritative origins, these rules were reformulated to serve a renewed purpose in the new textual and conceptual setting provided by the prologues and epilogues. Although both types of the text might have reflected certain common held values at the time of the composition, the texts served a different purpose in their literary and conceptual context. Once the wisdom-laws were adopted in a law-code, they were introduced to a new literary setting and political authority. Unfortunately, the potential concomitant social and political factors behind the literary transmission from *oral* to written form of the popular norms and their convergence with other rules in a code are largely overlooked in these non-legislative interpretations. Again, in spite of different starting points, the non-legislative interpretive models repeat the simplicity of the analogy made between wisdom literature and the Hebrew law-codes in biblical scholarship.

The neglect of socio-political factors in the literary process of wisdom-laws is also mirrored in Jackson's reconstruction of the legal system. While recognising judicial development from self-executing justice to a court system, he does not explore the socio-political force behind such changes. Apparently, how a relatively formal court system could have been established in place of informal dispute settlement is not discussed in his analysis.

Methodologically, Jackson's adoption of source criticism in his analysis of textual development of the Hebrew code is problematical. Since a number of fundamental problems inhere in the source criticism (A), the application of the method and its premise has to be handled with due caution. Apparently, the hypothsis provided by the source criticism cannot truly reflect the political role of the scribal elite in their literary activities, in which the non-legislative interpretation seems to be its counterpart. Again, as in Westbrook's interpretation, these Deuteronomic and priestly editors were no more than an independent academic institution and the text produced by such an institution is taken as a piece of academic work without binding force.

Moreover, while applying the source criticism in his textual analysis, Jackson seems to read uncritically the apparent narrative associated with the Hebrew code. He undestands the narrative of Jethro's wise advice and the establishment of Mosaic administration as the actual social setting for the codification of CC, which may fit

his wisdom-law setting, yet in fact was specially designed as a model for an ideal governance that the nation intended to establish at the time of textual finalisation. Accordingly, the CC would be a reformulated state law rather than wisdom-law from a kin-based community. Thus, instead of taking the narrative at face value, we should seek a socio-political setting for the development of legal systems in Israel on the one hand, and the codification of the Hebrew codes in the Torah on the other (see chapter 4.A.B.C).

3. Law-Codes–Mistaking Scribal Advice for Law

Fitzpatrick-McKinley has also argued for a scribal origin of the ancient codes by proposing an interpretative model for the development of the ancient codes from scribal advice to law. Via making an analogy with the conceptual, textual and legal development of the classical Indian law *dharma*, the legislative status of the Hebrew codes is interpreted as a result from mistaking scribal codification of popular social norms for law by early Judaism. She understood the original function of the *dharma* as dominant moral and religious obligation, appealing to individual moral sensibility and divine punishment without legal coercion. However, with increasing juridical capacity made to the text and its association with royal authority, the dharmic texts came to function as classical legislation in India. The decisive step for such an establishment is understood to be taken by the British conquerors, who accidentally mistook the texts for Indian legislation.[1]

By a straightforward analogy, both *kittum* in the cuneiform codes and *torah* in Hebrew literature are considered to be non-legislative concepts, and the original texts to be a manifestation of moral and religious requests without binding force. In this form, the origins of the Hebrew codes would not have been codified as state law, but as scribal advice, the written form of the oral wisdom. Once these popular wisdoms were fixed in a written form, they no longer mirrored actual practices, but were literarily preserved in the Torah as moral traditions.[2] When those court scribes, who served diverse functions in a variety of state administration during the Solomonic

[1] R. Lingat, *The Classical Law of India* (California: University of California Press, 1973); A. Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law* (JSOT Sup 287; Sheffield: Sheffield Academic Press, 1999), 113-82. For a discussion of Lingat's approach, see B. S. Jackson's review, "From Dharma to Law," *AJCL* 23 (1975): 490-512.
[2] Fitzpatrick-McKinley, *The Transformation of Torah*, 113-45.

period, connected the text with their royal sponsors, the social orders collated in the code were thus promoted, along with the royal propaganda. More moral orders were added to the text later and the texts were vested with divine authority during the reigns of King Hezekiah and Josiah. Like the cuneiform codes, a prologue and epilogue are believed to have been created to harness the code, in order to support the political regimes that sponsored the codification. Thus, royal sponsored scribal interpretation of the original text had enhanced both the status and social significance of the text.[1]

However, when the scribal institution asserted its financial independence from the royal court in the late pre-exilic period, the wisdom rules were subsequently divorced from royal association; and the royal propagandistic prologue and epilogue were removed from the text. Thus the text became increasingly difficult for the new readers without reference to the original purpose of the composition. On the other hand, the increased authoritativeness of the text made any alteration and suppression of the text impossible. Professional interpretation was thereby undertaken to meet the demand of acquisition. As a further development, the autonomy of scribal professionalism could lead to the cultivation of scribes' own ideology, writing tradition, and the establishment of their own financial and political supporting system. In this form, the text would be subsequently imposed as *scribal* ideology in order to fill the vacuum left by the prologue and epilogue of *royal* propaganda.

Accordingly, the original literary and political framework of the code could have been replaced by the form and concept of covenant, and the text would have been correspondingly ascribed to patron god Yahweh instead of any political institution. With a further improvement made for the inner coherence and for the social significance of the content, the code could stand up on its own merits at last, without any political support. The transformation of the scribal collection of social norms thus came complete with the concept of divine legislation.[2] With the passing of time and fundamental change in political power structure after the Exile, the text would become incomprehensible to the new generations in classical Judaism, and the interpretation of the text gradually developed to a scribal profession, in order to make the text meaningful and relevant to the new generations. Thus a new social system was propagated via scribal reinterpretation and promotion of the text, which was

[1] Ibid., 146-66.
[2] Ibid., 166-72.

largely accepted by society. The elite literature, therefore, came to function as a unique model for acculturating old and new values.[1]

Fitzpatrick-McKinley's reconstruction of the literary process of the CC against Israelite social contexts sounds compelling and apparently fills certain missing links in the non-legislative interpretation substantiated by Westbrook and Jackson. It seems particularly to have solved the major contradiction between the actual legislative function of the Hebrew codes in Judaism and the assumption of non-legislative status of the texts in the interpretation. Nevertheless, it leaves the obvious fact unexplained that no code, neither the cuneiform nor the Hebrew codes, is ascribed to any scribal organisation either in an explicit or implicit way. The cuneiform codes are in fact endowed with a contemporary king's authority and the divine patronage of socio-judicial justice the king has established; and the Hebrew codes are seen as the result of divine instruction authorised by the communal leaders as constitutional law for the firm establishment of a holy nation. Scribal organisations, which had been responsible for the composition and redaction in either case, remain unmentioned in those codes. Accordingly, the claim that the text was composed as intellectual property of a certain scribal institution cannot stand at all. Instead, a question can be raised: if those texts were authoritative enough on their own merit, why were they vested with the highest political authority recognised in each associated society in the composition?

In fact, the most vital point that has been missed in Fitzpatrick-McKinley's analysis is British political and military power, which played the most significant role in the recognition of the *dharmic* texts as classical Indian legislation. As indicated in her analysis, it was not the misunderstanding of the *dharmic* texts itself that transformed the status of the text, but the power of the British colonists that made their misunderstanding irreversible and irrevocable. Thus, the truth is that, with the support of political power, a non-legislative text can be brought into force; without sufficient power, legislation can be disregarded and less enforced. A common gap between the legislative status and actual function of the law can be seen from the Judaic struggle for the implementation of the recognised law-codes. Without efficient backing from a political institution, these rules could not be put into practice even if their legislative status were formerly established.

[1] Ibid., 172-77.

On the other hand, we should be aware of an actual social function of the *dharmic* texts in the process of legislative recognition. Evidently, the texts had already obtained a classical position in Indian society prior to the text being officially mistaken for legislation. The British colonial authority might have misunderstood the political status of the texts, but was absolutely right as to the social function of the texts in which the embodied norms were widely accepted and practised in Indian society. Correspondingly, a legislative status would be seen by the westerners to be the most appropriate title for its actual social function. Foreign misunderstanding of the *dharmic* texts in this regard seems likely to be an authoritative interpretation of the undefined status of the texts.

Nonetheless, in spite of these missing points in Fitzpatrick-McKinley's reconstruction, her interpretative model may be analogous to a certain type of classical literature, such as Confucius' writings in ancient China, which derived from the sage, yet were recognised and practiced as authoritative norms in imperial China.

Conclusion

Our above review has revealed certain fundamental problems underlying the non-legislative interpretation of the ancient codes. First of all, the interpretation fails to differentiate written law from prevailing customary traditions, which leads to the disregard of the potential concomitant social changes behind legal development and literary composition in a particular culture. Secondly, the interpretation has divorced the texts of the ancient codes from any substantial political influence that is either explicitly exhibited in the texts or was generally recognised in ancient society. Thus, the non-legislative approach cannot explain the literary and socio-political relations between the prologue-epilogue frame and the corpus of the rules. We are therefore forced to take a fair and balanced approach to address the legal theories in relation to the different power structures in ancient times in general, and particularly to interpret the nature and function of the law-codes in their own socio-political contexts.

E. Legal Breakthrough --from Monarchical law to Constitutional law

Legal historians in the past have been aware of the development and interaction of written law in relation to the development of legal systems in various ancient cultures. [1] In the reality that neither non-legislative nor legislative interpretation fairly represent the characteristics of the ancient codes, an appropriate analysis of the formation and social significance of the ancient codes should place the texts in their own socio-political contexts in line with the general legal trend reconstructed by legal historians. This new approach shall make allowances for the diversity and variety of ancient laws originated from different cultures on the one hand, and for legal development in different power structures on the other. This approach, however, is not a mere sociology and history of ancient legal systems, but will be engaged in both conceptual discussion of the general position of law in different power structures, and distinctive ideology within a culture.

1. The Concept of Law

The supposition of our analysis is that while the ancient laws appear to be different from modern laws in many ways, as a means of governance, they must also share certain elements with modern laws. In order to understand what the ancient laws were and how they could have functioned in state administration, we need to go back to the concept of ancient law as well as of modern law. In order to avoid the presuppositions of modern advanced law (see Introduction A), our understanding of the concept of law is not dealing with the diversity and controversy in modern philosophical debate, but the basic concept of universally recognised legal philosophy established by John Austin and further defined by H. L. A. Hart.[2] Given

[1] See A. S. Diamond, *Primitive Law Past and Present* (London: Methuen, 1971); and the summary by B. S. Jackson "Evolution and Foreign Influence in Ancient Law," *AJCL*16 (1968): 372-390.

[2] See the comment by Jeffric G. Murphy and Jules L. Coleman, *Philosophy of Law: An Introduction to Jurisprudence* (Dimensions of Philosophy Series; Boulder, San Francisco, and London, Westview Press, 1990), 26-27; and R. Brague, *The Laws of God: the Philosophical History of an Ideal* (trans. Lydia G. Cochrane; trans. of *La loi de Dieu: Histoire philosophique d'une alliance*. Paris: Éditions Gallimard, 2005; Chicago and London: The University of Chicago Press, 2007), 11-13..

that the basic concept of law is defined by Austin as a command or order given by a sovereign[1] and is further distinguished from common commands by Hart with the character of generality and persistence of the command, [2] the definition of law we understand is that "the laws of any country will be the general orders backed by threats which are issued either by the sovereign or subordinates in obedience to the sovereign."[3] Correspondingly, our interpretation of the nature and social significance of the ancient codes is based neither on literary criteria of modern law, nor on the court procedure regulated by modern constitutional laws, but the character of the ancient laws inherent in the ancient texts and the socio-judicial functions imposed in the rules.

2. Law-Codes in their Contexts

As a means of governance, the ancient laws would have been directly involved like modern law in state administration. However, unlike modern laws that regulate everything for society in line with social and ideological developments in modern times, the position of the ancient laws in a monarchical power structure would have been less legislative than modern laws in a democratic system. Since power structure plays a decisive role for the position and administration of law both in modern and ancient times, our reconstruction of the position of the law in a particular culture will be enlightened by the common concept and exercise of human kingship in ancient times (see chapter 3.A and B). In order to solve the complications and confusions in modern debate of the position and function of the ancient laws, we will make a distinction between legislative status and function of the ancient codes. While recognising that a legislative position of the ancient codes would be probable (see chapter 2.B), our discussion of the legislative function of the ancient laws will make allowance for the fluctuation of law enforcement in a totalitarian regime in accord with the general position of law in a monarchical system and the exercise of individual kingship in particular (see chapter 3). In the light of a lack of direct

[1] John Austin, *The Province of Jurisprudence Determined* (ed. W. E. Rumble; New York and Cambridge: Cambridge University Press, 1995).
[2] H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 2nd. ed. 1998), especially 18-25.
[3] Ibid., 25. Ronald Dworkin challenges Hart's view by pointing out that written law is indistinguishable from customary rules in early court systems. This is however concerned with the practice of written law rather than with the legal position of law. See his *Taking Rights Seriously* (Cambridge: Cambridge University Press, 1977).

evidence for how those ancient laws functioned in the ancient courts, our reconstruction of the function of the ancient laws therefore will look at the evidence of state reorganisation that would have stimulated legal development in a culture on the one hand and in relation to the existing social practices on the other.

3. From Monarchical Code to Constitutional Law

The Hebrew law included in the Torah is understood to be divine law, and its position and function appear to be the equivalent of modern constitutional law. This unprecedented legal development would mark a significant conceptual breakthrough in the ancient Near East. This constitutional position of the Hebrew law had evidently been recognised by ancient Judaism and was continually upheld in rabbinical interpretation of the laws. It is necessary, therefore, to investigate how such a leap came complete with the claim of divine law in Israelite society reflected in the Torah.

Accordingly, our investigation will place the legal development in Israel in the light of general legal development in the ancient Near East and in relation to the development of Israel's own statehood in particular. Our interpretative model will consider two major factors: the similarity between the cuneiform and Hebrew codes in a shared monarchical context, and the distinction of the Hebrew codes within the theocratic framework provided in the Torah. While the former factor is concerned with the formation of an early Hebrew code in a monarchical context in the light of the formation of the cuneiform codes in Mesopotamia, the latter element will be directly associated with the Israelite own socio-political context in which the Hebrew codes were shaped in their present form. In doing so, we will re-assess the study of the cuneiform codes which becomes increasingly important for a proper understanding of the general position of law in the ancient Near East, thereby revealing the characteristics of law inherent in the ancient codes.

Chapter Two
The Character of the Cuneiform Codes

Introduction

The recovery of numerous cuneiform tablets from the soil of the ancient Near East meant that the earliest legal traditions can be traced back further than Roman or Greek times.[1] The eight recovered cuneiform codes whose authorship and authority are directly connected with certain historical kings appear to hail from various regions and periods of the ancient civilisations, including the Sumerian, Old Babylonian, Assyrian and Hittite empires.[2] As a primary source of legal information, the texts of these codes share common literary characteristics and legal interest on the one hand, and cultural and political differences on the other. The earliest and most complete codes are the Laws of Ur- Namma (LU, dated around 2100 BCE), the Laws of Lipit-Istar (LL, 1930 BCE), the Laws of Eshnunna (LE, 1770 BCE) and the Laws of Hammurabi (LH, 1750 BCE).[3] Via years of effort, the study of these ancient codes has gradually reached a depth both in Assyriology and legal history; the primary debate is concerned with the nature and function of the rules and two debating camps have formed: legislative versus non-legislative interpretation.[4]

In order to reconstruct a fair and square picture of monarchical law, I am going to reassess the points made in the debate and to explore the characteristics of the ancient laws in this chapter. My analysis is however not simply to verify a certain

[1] For the importance of Greek and Roman laws as the foundation of democracy and how the system of law shaped the modern west, see Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (Tucson: University of Arizona Press, 1986).
[2] For a general understanding of the relations between early law and civilisation, see E. A. Speiser, "Early Law and Civilisation," *CBR* 31 (1953): 863-77; idem, "Cuneiform Law and the History of Civilisation," *PAPS* 107 (1963): 536-541.
[3] Roth, *Law Collections*, 13-142. For a review of the reconstruction of the LL, see Francis R. Steele, "The Lipit-Ishtar Law Code Author(s)," *AJA* 51 (1947):158-164. Also see G. R. Driver and J. C. Miles, *The Babylonian Laws* (2vols; Oxford: Clarendon Press, 1952-55) and *The Assyrian Laws* (Oxford: Clarendon Press, 1935).
[4] Westbrook defines the two opposing approaches as academic versus normative interpretations. This definition, however, cannot reflect a wider-ranged debate in the study of ancient law and would cause a misunderstanding of the function of the ancient law since law enforcement in ancient times cannot be fully reconstructed.

type of interpretation. Rather, I am attempting to reveal both literary characteristics and characters of the cuneiform law-codes, thereby reconstructing what are the ancient monarchical laws in general. While particular attention may be given to the LH as it appears as the most comprehensive and influential code in the ancient Near East, the individuality of each code will also be noted in order to unravel different norms and socio-political systems behind each composition. For a better understanding of the social function of the cuneiform codes in their associated societies, our analysis will not be restricted to the texts alone, but will be in relation to the societies in which the rules originated and the codes were formulated. In the circumstance that evidence from Mesopotamian soil appears inadequate, my analysis will extend to any ancient legal system which has been better reconstructed in modern scholarship and is seen as analogous to the cuneiform codes. This would include classical Athenian laws and Qin law in imperial China.

A. The Literary Characteristics of the Cuneiform Codes

The study of cuneiform codes was initiated with a legislative interpretation of the newly-recovered LH in 1902, mainly supported by the internal evidence of the text without further placing it in a broad socio-political matrix. The position that the cuneiform rules were law reforming certain aspects of society and thereby assumed to be applied in ancient courts (Müller 1903, Koschakers 1917, Leemans 1968, 1991, Preiser 1969, Klíma 1972, Weingreen 1976, Epsztein 1983, Pestschow 1986, Demare, 1987, Postgate, 1994)[1] soon encountered an argument that the text could only have been academic treatises on laws for legal enlightenment without legal force (Eilers 1932 Kraus 1960; Jackson 1975, 1989; Bottéro 1982; Dixon 1985;

[1] D. H. Müller, *Die Geseize Hammurabis und ihr Verhältnis zur mosäischen Gesetzgebung sowie zu den XII Tafeln* (Vienna: Verlag der Israelitish-Theologischen Lehranstatt, 1903; repr. Amsterdam: Philo Press, 1975); P. Koschaker, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis, Königs von Babzlon* (Leipzigs Veit 1917); W. F. Leemans, "King Hammurapi as Judge," in *Symbolae Iuridicae et Historicae Martino David Dedicatae* (LOA 2; Leiden: E. J. Brill, 1968), 107-129; J. Klíma, "La Perspective historique des lois hamourabiennes," *CRAI* (1972): 297-317; H. P. H. Petschow, "Beiträge zum Codex Hammurapi," *ZA* 76 (1986): 17-75; S. Demare, "La valeur de la loi fails les droits cunéiformes," *APD* 32 (1987), 335-46; J. N. Postgate, *Early Mesopotamia: Society and Economy at the Dawn of History* (London; New York: Routledge, 1994), 275-91.

Goody 1986, 1990; Michalowski, 1995; Lemche 1995).[1] A number of scholars had thus expressed their reservations about the legislative function of the codes.[2] The initial doubt cast by Eilers and Landsberger[3] has been further reformulated by F. R. Kraus, J. Bottéro,[4] and was then neutralised and justified by R. Westbrook.[5] Debate has thus been stimulated and embarked on the key question, "did these cuneiform rules function as law in a real sense in society?" However, in spite of the same premise, the non-legislative interpretation in fact represents a range of variation as regards the nature and function of the cuneiform codes. Here we reassess the interpretative models originated in the debate with an attempt to distinguish the subtle differences between them.

1. Resemblances between the Codes and Omens

The literary form of the codes has been intensively discussed in the non-legislative interpretation of the texts. Landsberger has made an analogy between the cuneiform omen texts and the codes in terms of literary style, the intellectual and literary process of formation and the function of the texts. Omen texts are seen as ancient medical and astronomical treatises developed in the long course of Mesopotamian history by accumulating the records of the scientific observations made on a variety of natural and celestial phenomena as well as the conditions of animals in various circumstances. Likewise, the cuneiform rules are understood as the collection of judicial verdicts, the record of valuable judicial decisions made by a king or royal judges. As the omens were widely believed to be 'judgments of God' in Mesopotamia, the rules are thus interpreted as 'judgments of a king'. [6] However, in

[1] See the review made by Westbrook, "Cuneiform Law Codes and the Origins of Legislation," 201-22; and N. P. Lemche, "Justice in Western Asia in Antiquity, or Why no Laws were Needed!," *CKLR* 75 (1995):1695-716.

[2] Driver and Miles consider the codes as a series of amendments to the customary laws of Babylon rather than law in a modern sense. See Driver and Miles, *The Babylonian Laws* (vol 1; Oxford: Clarendon Press, 1952), 41. Finkelstein sees the LH as r*oyal apologia.* J. J. Finkelstein "Ammişaduqa's Edict and the Babylonian 'Law codes'," *JCS* 15 (1961): 91-104; also see Léon Epsztein, *Social Justice in the Ancient Near East and the People of the Bible* (London: SCM Press, 1983), 3-16.

[3] B. Landsberger, "Die babylonischen Termini für Gesetz und Recht," in *Symbolae ad iura orientis antiqui pertinentes Paulo Koschaker dedicatae* (Leiden: E.J. Brill, 1939), 219-34.

[4] J. Bottéro, *Mesopotamia: Writing, Reasoning, and the Gods* (trans. Zainab Bahrani & Marc Van De Mieroop (Chicago; London: University of Chicago Press, 1992), 156-84; trans. of *Mésopotamie. L'écriture, la Raison et les Dieux* (Paris: Editions Gallimard, 1987).

[5] Westbrook, "Cuneiform Law Codes and the Origins of Legislation," 201-22.

[6] Landsberger, "Die babylonischen Termini für Gesetz und Recht," 219-20.

spite of this royal origin and connection, the rules are not considered to function as precedents as in modern case law, but as mere scribal collections of verdicts enlightening legal questions for an academic purpose.

Premised on this, F. R. Kraus attempted to find more evidence for the thesis through referring back to the definition of the code in LH. The Akkadian phrase *dīnāt mīšarim,*[1] is interpreted as '*gerechte Richtersprüche'*, 'just judicial decisions',[2] and the point made that some rules in LH were not the actual decisions made by the king when acting as a judge, but resulted from deducing those real decisions. The purpose was to cover variants of a particular kind of case in order to teach reading and writing. The formulation of the code is thus seen as a purely literary activity and had nothing to do either with legal force or with legal system. The prologue which declares the enactment of the code is interpreted otherwise as a mere scribal device to convince people.[3] The role of King Hammurabi depicted in the prologue-epilogue frame is subsequently taken as a referee for the scribal work, rather than as a judge or legislator endorsing the text with royal authority. The numerous copies of the code recovered from ancient scribal centres are further seen as evidence of the scribal origin and literary function of the text.[4] Thus, in spite of royal and judicial origins of certain rules, Kraus deprives the text of any royal connection as a whole.

His analogy seems logical, yet untenable on a close inspection. In fact, the logical reasoning behind the comparison appears rather superficial: if both omens and codes share a common literary form, then they must have shared a similar scribal origin and a similar purpose in composition. If both went through a deductive process of formation and contained a common hypothetical element, then the texts could not have addressed the issues relevant to society, but were a literary invention made by the scribes.[5] The fundamental problem with the analysis is that literary resemblances between the two particular types of text cannot be a decisive factor in determining the nature and social function of each text. The similar literary form and intellectual process are not necessarily attributed to a particular scribal school as its distinctive mark of literary property, but as a common literary convention and

[1] M. E. J. Richardson, *Hammurabi's Laws: Text, Translation and Glossary* (Sheffield: Sheffield Academic Press, 2000), 118.
[2] F. R. Kraus, "Ein Zentrales Problem Des Altmesopotamischen Rechtes: Was ist Der Codex Hammu-rabi?" *Genava* 8 (1960): 285.
[3] Ibid., 288-290.
[4] Ibid., 293-94.
[5] Ibid., 293-94.

intellectual logic circulated and acquired in ancient scribal schools. Even if both texts were literally compiled by the same scribal group, it does not have to mean that the functions of each text were similar (see chapter 1.B.1). The original purpose of the composition of the codes has to be further illuminated as regards their political sponsorship and their social function stated or implied in the texts.

Close examination shows that there are substantial differences between the omens and codes in terms of literary style and social function. The omens as proto-scientific texts might have either provided foreknowledge of the inevitable consequences of a certain phenomenon or event, or offered solutions to cope with certain types of misfortunate.[1] The authority of the texts, however, can only be established by the credibility of the predictions. The law-codes, on the other hand, could not possibly have been enforced without political force. Rather than knowledge-based explanations as the omens, the simplicity and crudity of the rules, especially in early codes, in fact suggest their origins as arbitrary commands or powerful statements given and backed by a sovereign.[2] They seem powerful enough not to require any further explanation in the codes on the one hand, and would require authoritative interpretation when being applied in various circumstances in the courts. In this regard, the casuistic form in both texts may have had different implications in different social contexts. In the codes, the form can be an indication of generalising a particular case decision for a judicial purpose, and can be a hypothetical description of a particular event or phenomenon in the omens. Thus, literary form cannot conclude the function of a text.

Moreover, the numerous copies of LH found from later times may suggest the popularity and utmost importance of the text in later scribal education. It, however, cannot serve as evidence for non-legislative status or purpose in the composition. The popularity of the text can be an indication that its importance was not limited to the present, but could have had a profound influence on the future officials and judges trained in those scribal schools (see chapter 3.D).

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[1] See Bottéro, *Mesopotamia*, 169-72; K. L. Sparks, *Ancient Texts for the Study of the Hebrew Bible: A Guide to the Background Literature* (Massachusetts: Hendrickson, 2005), 217-24.

[2] For the discussion of the definition of law, see Hart, *The Concept of Law*, 18-25; For a further discussion, see Lloyd L. Weinreb, "Law as Order," *HLR* 91 (1978): 909-59; Martin Krygier, "Law as Tradition," *LP* 5 (1986): 237-262; and M. Gagarin, *Early Greek Law* (Berkeley: University of California Press, 1986), 2-16.

2. The Criteria of Law

Rather than focusing upon the discussion of literary elements of the codes, recent scholars have elaborated the non-legislative interpretation by assessing the relevance of the rules in the legal system, and the extent of thoroughness and systemisation of the rules within a code, especially the LH. Bottéro points out that the code neither defines the obligations of any governing system or institution, nor the administration of justice as a law-book should. Instead, the code demonstrates inadequate comprehensiveness in subject coverage or thoroughness of the rules within a category, and the rules in casuistic form are unable to express legal principles abstractly. The illogical and inconsistent relations between the rules thus suggest that the code was not a law-code in a true sense of law.[1] Moreover, given that no excavated data implied that the rules were directly applied and cited in the courts, the code shouldn't be taken as authentic law; rather, it should be seen as a collection of verdicts providing some judicial advice for judges in peculiar legal situations.[2]

These points made by Bottéro seem overwhelming enough to refute any legislative element of the codes. The decisive criteria in the assessment, nevertheless, are apparently deduced from modern constitutional law, especially in a democratic context, rather than from common ancient law (see Introduction A). This has consequently excluded the ancient codes from legal culture, and denied the distinctive features of ancient law either in Mesopotamia or in other ancient oriental societies, without an awareness of a huge gap created by time, space and culture, between the ancient and the modern. In fact, court records cannot be taken as sole evidence for law enforcement and not every law is directly linked to a court system since the ancient codes included different types of law without modern categorical differentiation.[3] Further, ancient courts might have applied a relevant written rule in a case, but not necessarily kept a record of the application. Klima suggests that

[1] Bottéro, *Mesopotamia*, 162-64.
[2] Ibid., 165.
[3] Westbrook has noted that the modern division into civil and criminal law, with its separate courts and rules of procedure and evidence, had no reflection in the ancient system. See his *Studies in Biblical and Cuneiform Law*, 8.

Mesopotamian judges might not have been required to make a court record of the basis of jurisdiction as in the Roman system.[1] In fact, the phenomenon of no court record of the application of a rule is not limited to the cuneiform rules, but appeared rather universal in early legal history (see chapter 3.C.3). Correspondingly, the expectation of a direct link between law enforcement and court records seems likely to be the imposition of modern court practice on the ancient courts.

Since legal history exhibits that there has been a long process from a society ruled by customary law to a system regulated by written law, we cannot expect ancient law and court practice to be similar to ours. Even in modern times, in spite of the significant development of law, many nations have not yet fully achieved the constitutional goal of "ruling society by law" in a strict sense. Many countries may have developed an advanced legal system, but this does not mean that law in these countries must have strictly followed a democratic model. For instance, we cannot deny that the law in totalitarian regimes is law. It is law but it is a different form of law from that recognised in democratised countries.

3. Definition, Source and Function of the Codes

Based on the previous interpretation made in the non-legislative approach, Westbrook has further clarified the distinction between legislation and academic treatises.[2] He defines legislation as an authoritative source of law by which the courts are bound to obey its precepts.[3] The authority and judicial function of law are important elements in the assessment of the nature and function of the ancient codes. However, the basic definition of law needs to be further clarified when applied to ancient law. The problem with Westbrook's definition is that he identifies the status of ancient written law with law enforcement without differentiating the subtle differences between them. Once the enforcement of the ancient law cannot be firmly established without the support of data evidence, the legislative status of the law is thus totally denied (see Introduction).

We have to note the difference between the legislative status and function of codes in spite of the close correlation between them. First of all, the position of

[1] Klíma, "La Perspective historique des lois hamourabiennes," 308.
[2] Westbrook, "Cuneiform Law Codes and the Origins of Legislation," 202-11.
[3] Ibid., 202.

written law in ancient empires was far from absolute and the laws could not have functioned as the only authoritative source in royal administration. Powerful individuals in heroic societies, such as the king himself, or royal appointed officials, or local influential nobles, could have given their own orders when dealing with particular cases, or manipulated the letter of the law either for moral or for intellectual bias. We cannot expect that the status of law could have been upheld in ancient society as it is in modern democratised states. Moreover, while the major function of ancient law appeared to complete or reform existing practices, well-established socio-judicial norms could have continued to function, especially in cases where written law provided no clear guidance. It is possible therefore that there might have been a huge gap between the position and function of ancient law at a particular time in an ancient empire. This, however, cannot overturn the legislative status of the laws established in the regime.

Premised on his own definition of law, Westbrook considers precedents and statute laws as the only source of authoritative law. Even so, the precedents which were based on past judicial experiences are seen as retrospective legislation and could have only resulted in descriptive rules in the cuneiform codes, lacking prescriptive function. The casuistic rules in the codes thus have no binding authority as precedents even though "dressed up as precedent", but only possessed persuasive power as consultative documents. Statute law, on the other hand, while being considered as prescriptive legislation, is nevertheless restricted to the royal edicts concerning adjustments to royal administrative machinery, debt-release decrees, and fixing of tariffs, such as interest on loans and the price of goods and service. Moreover, while considering the debt-release decrees not to be enforced constantly, he restricts genuine law only to constitutional and administrative laws, and laws on taxation and price-lists. In this form, the cuneiform rules have been excluded from the category of law and largely identified with modern tort.[1] Thus, through narrowing down the scope of statute law and divorcing royal or judicial connection from the majority of the cuneiform rules, Westbrook has dismissed the legislative status and function of the cuneiform codes.

Nevertheless, the restriction of subject matter in statute law appears rather subjective. Royal reform measures might not have been limited to imperial

[1] Ibid., 217-19.

administration and economic control, but also could have been concerned with curbing crimes and reforming social practices. Unlike the city-state system, wherein local autonomous systems could have been preserved, an empire like Old Babylon, which experienced considerable territory and population expansion under the vigorous king, Hammurabi, could have introduced old and new laws to the peoples newly included in the imperial system. A systematic codification of state policies and recognised norms could have been necessary for the unification and consolidation of the various peoples from different cultural backgrounds in the empire. The code may thus have reflected both social reform and the introduction of certain dominant traditions in the newly united empire. The subject difference between those statute laws from royal edicts and the rules of the code may indicate the development of law in the king's later reign by the time of the codification on the one hand, and the different functions of the royal edicts and codified law on the other (see chapter 3.B.2). Gagarin in fact has noted that the literary evidence for the early law givers in ancient Greece suggests that they limited their activities to the areas of tort law, family law and legal procedure.[1] Thus, in spite of different form of composition and promulgation between two types of law, they were all endowed with royal authority. While individual royal edicts can be taken as the king's orders issued separately, the code can be seen as systematically codified laws.

4. The Literary Formula of the Rules

As far as literary form of the cuneiform rules is concerned, both Bottéro and Westbrook vilify casuistic formulae as literarily insufficient for expressing abstract concepts and categories, and consider that these casuistic rules would be inapplicable in the courts.[2] The problem, however, is not with the forms of the rules since court practice in ancient times would be different from modern practice (see chapter 3.C), but the non-legislative supposition that inheres in the interpretation. This trend can also be seen in the study of biblical law, in which apodictic rules are considered inapplicable among biblical scholars (see chapter 1.B).

[1] Gagarin, *Early Greek Law*, 51-80.
[2] Bottéro, *Mesopotamia*, 173-77; Westbrook, "Cuneiform Law Codes and the Origins of Legislation," 218. Westbrook, while reaching a similar conclusion, tactically argues that casuistic form cannot reflect any particular source of law, and the rules were generalised for pedagogical or rhetorical purpose. See his "What is the Covenant Code?," 28-30.

Literarily speaking, both casuistic and apodictic forms represent common ancient formulaic expressions circulated in ancient scribal circles. Each has its own advantage and disadvantage in the formulation of rules. [1] Apparently, casuistic formulae are not exclusive to the cuneiform rules, but also appear in the omens texts in the cuneiform writings. Apodictic formulae, on the other hand, formulate wisdom instruction in the HW as well as legal rules in the Torah. In fact, these two major forms both appear in the cuneiform and Hebrew codes, and the difference between them seems likely to be a matter of literary preference within each associated legal culture, rather than a different nature and function imposed in the rules.[2] Thus, modern scholars may find these forms quite insufficient in articulating the meanings of the rules; this, however, might not have been the case to the ancient legislators and judges. The apodictic rules which articulate general prohibitions or requirements could be interpreted and contextualised for dealing with a specific case without undermining the principle. A principle can also be extracted from a group of casuistic rules in order to deal with an exceptional case whose judicial circumstance might not be covered by the existing rules.[3] Just as Athenians could apply abstract law in specific case dealing, Mesopotamians could have deduced criteria from a casuistic rule. Accordingly, a proper application of the rules dressed in different forms depended on the capacity and integrity of the ancient judges when the letter of the law served its primary function in the ancient court system.

In fact, an ancient rule can be reconstructed in different forms without losing its original meaning or imposed purpose. For instance, a casuistic rule in LU (1)[4] "if a man commits a homicide, they shall kill that man" can be reformulated in apodictic formula as a commandment in the Decalogue, "You should not murder" or as a third person in the CC, "whoever strikes a person mortally shall be put to death" (Exod 21:12). From a modern perspective, the rule can also be better expressed with the double form, "You should not commit murder, but if you do commit it, you will be punished with the death penalty". In this sophisticated expression, the apodictic part of the rule states a general judicial principle and the casuistic part specifies the legal

[1] Westbrook, ibid., 22.
[2] See R. Yaron, *Laws of Eshnunna* (2nd ed; Jerusalem: Magnes Press, 1988), 106-13; also J. Muffs, *Studies in Aramaic Legal Papyri from Elephantine* (*Studia et Documenta ad Iura Orientis Antiqui Pertnentia* 8; Leiden: Brill, 1969), 17-23; also Westbrook, "What is the Covenant Code?," 30-32.
[3] R. P. Knierim, "The Problem of Ancient Israel's Prescriptive Legal Traditions" in *Thinking Biblical Law*, Semeia 45 (1989): 7-25.
[4] See Roth, *Law Collections*, 17.

consequence following the breaking of the law. Certain parenthetical considerations can also be added to the original laws in order to clarify different types of homicide as that in the CC (Exod 21:12-14):

"Whoever strikes a person mortally shall be put to death. If it was not premeditated, but came about by an act of God, then I will appoint for you a place to which the killer may flee. But if someone wilfully attacks and kills another by treachery, you shall take the killer from my altar for execution."

The employment of the two formulas and their variations in the cuneiform codes suggest that the draftsmen felt free to choose certain appropriate forms to formulate the rules. This does not mean that no preference was made in legal drafting. In fact, literary preference can be found in different codes articulating a similar purpose. For instance, the values for renting or hiring are priced in casuistic form in the LH (268-77). The standardisation of the values of husbandry products is however presented with an austere statement in the HL (178-85) and an exceptional apodictic rule (186).[1] Therefore, *literary forms* cannot account for a decisive factor for the interpretation of the nature and function of a rule or a code, but the articulated *purpose* should be accountable. Accordingly, it would be irrational to argue for or against the applicability of the ancient laws on the basis of their literary forms. One may note the unsophisticated nature of the ancient laws, but the criticism of inapplicability would be inappropriate in this regard.

On the other hand, apodictic rules may represent a particular type of law in the ancient Near East. Stanislav Segert has noted that the apodictic formulations in third person were used mostly in edicts and laws promulgated by an authority, such as a ruler, king, council and people's assembly in the ancient Near East. The apodictic laws in second person found in the Hebrew codes, Hittite instruction and in ancient Roman laws are limited to prohibitions of a sacral character.[2] He thus concludes that apodictic formulas represent an authority that promulgates the laws: while the apodictic laws can be linked to a king or a legislative body in Hittite and

[1] Ibid., 130-277; and H. A. Hoffner, *The Laws of the Hittites: A Critical Edition* (Leiden: Brill, 1997), 141-48.
[2] S. Segert, "Form and Function of Ancient Israelite, Greek and Roman Legal Sentences," in *Orient and Occident: Essays Presented to Cyrus H. Gordon on the Occasion of his Sixty-fifth Birthday* (Edited by Harry A. Hoffner. AOAT 22; Kevelaer: Butzon & Bercker; 1973), 161-65.

Roman empires, the Hebrew apodictic laws are underpinned by the authority of God.[1]

In addition to these, Westbrook's identification of the different functions of the rules in different literary forms is misleading. The supposition that a casuistic rule must have addressed a specific legal circumstance and an apodictic rule must be concerned with a principle is a facile generalisation without a solid ground. In fact, casuistic rules can be understood as a legal principle referring to a general legal situation. A close look at certain casuistic rules shows that the so-called solutions provided for a particular offence can be applied as a legal principle in the courts. This is especially the case in the earliest laws recovered from Mesopotamia. For instance, the provision that "if a man commits a homicide, they shall kill that man" is not a solution resulting from a specific case, but a principle established in state mechanism that the crime of homicide should be uniformly punished by the death penalty. The purpose was clearly to establish a capital principle for the legal system. Thus, the individual Sumerian laws are not collected as judicial decisions to aid in judging specific cases in the courts, but instead aim to establish principles in jurisdiction.

This does not appear as a single phenomenon in the LU, wherein the rules address judicial principles in general instead of specific legal circumstances defined in individual case decisions. The rules in casuistic form are in fact concerned with leading circumstances in jurisdiction; the standard penalty prescribed in the rule is for a certain type of offence rather than for a single case. The generality of these rules can be seen from the fact that they neither clarify the extent of the offence nor supply information for exceptional circumstances. Such a trend is also reflected in the LL. The casuistic rules which standardise the values of farming and husbandry products (1, 2), and the price of renting (3-11) appear as state policies regulating and controlling the state economy as a whole, rather than a collection of irrelevant rules without a coherent purpose. Evidently, the legislative nature and function of these rules have been underestimated in the non-legislative interpretation.

Further, the incomprehensiveness of the ancient codes cannot be a reason for the non-legislative interpretation of the status and function of the ancient law-codes. The simplicity of the ancient codes should be understood in the general relationship

[1] Ibid., 165.

between state law and well established norm in ancient times. Since state law was issued by a contemporary ruler and meant to be enforced on a nation-wide scale, it represented a different type of rules, to which even well established local norms had to be subordinate. The codification of a law-code under the supervision of the contemporary ruler suggests that only those rules that the rulers commanded be enforced on a nation-wide scale could have been included in the code. In this regard, the rules embraced in a code can be a reflection of either the new systems established by the regime, or those local customary rules recognised and authorised by the regime as nation-wide practice. Thus, the codified laws were meant to go with those un-abolished local customary rules in local governance, rather than regulating everything for society as modern law.

The simplicity of the Sumerian codes, in fact, can be partly attributed to the early stage of state law, partly to the social system of a city-state. While the governance of a city-state would allow local traditions to thrive under the central administration, the limited rules in the codes would reflect the unsophisticated condition of state law. Thus, the simplicity of the early law-codes could not have limited its legislative function as state law, but distinguished the rules as order in a social structure that is different from a modern legal system.

Summary and Conclusion

The review of non-legislative interpretation of the definition, literary forms, source of and function of the cuneiform rules demonstrates how modern presuppositions of advanced law and of legal system have impacted upon our understanding of ancient laws and systems. Although it is important to recognise the difference between the ancient and modern laws, this is by no means to say that we should exclude ancient law from the legal sphere. It is important, therefore, to appreciate ancient law as a part of legal history in which law developed in different social systems. Accordingly, we do not limit our analysis to the literary characteristics of ancient codes in terms of category, form, and the language chosen to formulate the provisions, but extend it to the essential elements relating to the nature and social function of the ancient codes. In doing so, we turn to the review and analysis of the legislative interpretation of the ancient codes.

B. The Character of the Cuneiform Codes

In contrast to non-legislative interpretation of the ancient codes, legislative interpretation is not interested in literary characteristics of the codes, but the character of ancient law in a given political context. Methodologically, this approach can be defined as sociology and history of law, whereby the association of royal authority, the socio-judicial function of the rules, and legal development in the ancient Near East are the major concern in the analysis.

1. Royal Enactment of the Codes

Unlike non-legislative interpretation divorcing the rules from political or legal authorisation of the texts, legislative interpretation gives a weighted consideration to the formulation and enactment of these codes exhibited in the prologue-epilogue frames. Petschow has noted that the frame to LH could have provided a political setting for royal enactment of the code and obliged the judges to apply the relevant rules in the courts.[1] The invitation that, "let any wronged man who has a lawsuit come before the statue of me, the king of justice, and let him have my inscribed stele read aloud to him, thus may he hear my precious pronouncements and let my stele reveal to the lawsuit for him…"[2] is seen as royal promulgation of the code. Unfortunately, Westbrook subjectively interprets the following line "may he examine his case, may he calm his (troubled) heart, (and may he praise me)" as the desirous effect of prayers delivered in the temple[3] rather than seeking legal help in the temple wherein the stele of the code would have been erected. Although delivering a prayer in a temple appeared quite common, however, a temple as the public centre of a community was also the very place for dealing with various communal affairs, certainly including judicial settlement.[4] In fact, the textual context indicates judicial matters relating to the law and the administration of justice in the temple. Lafont

[1] Petschow, "Beiträge zum Codex Hammurapi," 21-22.
[2] See Roth, *Law Collections*, 134.
[3] Westbrook, "*Cuneiform Law codes and the Origins of Legislation*," 203.
[4] Postgate, *Early Mesopotamia*, 131-36.

rightly interprets invitation as the purpose of the composition and that state law particularly provided the opportunity of a trial for those who felt aggrieved and complained to the king or his officers.[1] Klíma and Demare also point out that the divine patronage of the text and of the system of justice in the epilogue manifests the status of the text as a royal enacted code which could bind the courts.[2] The monumental publication of the codes indeed suggests the importance of the text and the authority that published it. R. Thomas has noted the publication of early Greek laws: "The dramatic monumental presence of the laws was meant partly to impress inhabitants with the ineluctable authority of the laws and those who administered them."[3]

Publicising the codes could have meant that the code was intended not only to be widely-recognised state law, but also to enhance legal transparency in the empire so that the laws could be consulted by individuals, thereby promoting the legislative function of the laws in state administration. Theoretically, this indeed can be seen as a significant step made in legal history, not only the development of written law, but also opening public access to the enacted law-code. The real problem is that we do not have enough evidence to examine the realisation of the proclamation. In spite of this obstacle, we may find a similar movement in other political regimes, such as legal culture in imperial China.

According to Ma Zhi Bing, royally issued policies in ancient China were often kept secret by the local feudal elite so that the policies which would be beneficial to the majority of the ordinary people could never have been published locally or exactly enforced. Instead, the local elite made their own policies to exploit the people as much as they intended so that the people constantly suffered from various excessive taxes and services without knowing the real royal policies. Publicising the royal policies and monitoring law enforcement locally became the prioritised agenda in late royal reforms that set a prototype for Shang Yang's reform

[1] S. Lafont does not consider it as an allusion to an appeal before the royal court against the decision made by a lower court, while Roth takes the "wronged man" as someone who had already lost a case. In either case, the importance of this invitation offers a hope of seeking justice in a royally established justice system. S. Lafont, "Codification et Subsidiarité dans les Droits du Proche-Orient Ancien," and M. Roth, "The Law Collection of King Hammurabi: Toward an Understanding of Codification of Text," in *La Codification des Lois dans l'Antiquité: Actes du Colloque de Strasbourg 27-29 novembre 1997* (Edited by Edmond Lévy; Paris: CRPOGA Strasbourg, 2000), 53-54; 20-21.
[2] Klíma, "La Perspective historique des lois hamourabiennes," 308; Demare, "La valeur de la loi dans droits cunéiformes," 335-46.
[3] Thomas, *Literacy and Orality in Ancient Greece*, 85, 155.

in the pre-Qin dynasty (230-221).[1] Following the success of the reform and the expansion of the Qin empire, Qin law was significantly developed and placed a great emphasis on the wide publication of law and strict law enforcement, which in effect led to the unprecedented period in legal history, defined by modern legal historians as the epoch of ruling by law in imperial China.[2] Qin law, recovered from a group of tombs in Hubei province in 1975, consists of administrative laws, tough criminal laws, considerable economic laws, especially concerning land nationalisation, taxation, transactions, finance, standardisation of weights and measures, and civil laws.[3] The epoch of ruling by law in a real sense evidently resulted in associated innovations: the improvement of royal administration and its supervision of local administration, combined with the good circulation of the enacted laws and the success of individual litigation in the courts.

Analogically, the promulgation of the cuneiform code can be seen as a mark in legal history that the kings at least were becoming aware of the importance of publication of law to the establishment of the system of justice in the empires. The publication of law could have consequently led to the development of legal solicitation in society. The invitation of finding a relevant law from the inscribed code for a lawsuit could have been initiated by the practical need for individual litigation. Although there is no further information concerning the practice of law in Old Babylon, we find this level of the administration of law in ancient Greece. A number of scholars have testified that the Athenians may have attached symbolic (propagandistic) importance to the law as other state documents, but these laws were indeed promulgated and the texts were read and consulted by litigants to prepare their court speeches for the cases in which they were involved.[4] Apparently, when publication of the laws became common, some individuals would have begun citing relevant laws in court for litigation, though at the initial stage, the law might have

[1] Zhì-Bīng Mǎ, *The History of Chinese Law* (Beijing: Beijing University Press, 2004), 51-54 (in Chinese).
[2] Ibid, 54-78.
[3] See Yì Zhào, Yì-Fēng Zhào, eds. *The History of Ancient China* (Beijing: High Education Press, 2002), 261-64 (in Chinese).
[4] James Sickinger has noted that in spite of the possibility of hindrance that might be caused by the scattered publication of law, searching relevant archived or inscribed laws could not have been a laborious task in a society which revolved around a human network. See his "The Laws of Athens: Publication, Preservation, Consultation," in *The Law and the Courts in Ancient Greece* (ed. E. M. Harris and Lene Rubinstein; London Duckworth, 2004); 95-96. For the establishment of a city archive in Athens at the end of the fifth century, see R. Thomas, *Oral Tradition and Written Record in Classical Athens* (Cambridge: Cambridge University Press, 1989), 38-39.

been applied to create a rhetorical effect rather than as an essential legal ground as in a modern court, and litigation relied on private initiative rather institutional act.[1]

This legal phenomenon and trend point out the inevitable development in a legal system: publicising law led to the circulation of law, and the circulation of law enhanced the legislative position and function of written law in the administration of justice, and the enhancement of the actual legislative function of law in court would further stimulate the development of law (see chapter 7.E). Such mutual interaction was evidently related to legal transparency and efficiency. In this regard, the prologue-epilogue frame in the cuneiform codes suggests that the Mesopotamian rulers were aware of the paramount importance of enacting and publishing law to the establishment of the system of justice, though the reconstruction of the administration of law in each associated empire requires more evidence.

2. Law and State Reorganisation

A number of scholars have noted that the purpose of the composition of the codes was to replace various conflicting local systems with an imperially regulated system. The formulation of the LH is understood to be initiated with the aim of providing a unified law and judicial system for the newly-established empire, thereby resolving conflicts among diverse populations who spoke a variety of dialects and languages, followed a variety of customs and shared different values. The written laws are thus seen as the reflection of social reform made in the empire rather than a mere restatement of existing practices. This point seems to be echoed by the state reorganisation recounted in the prologues and substantiated by the juxtaposition of old and new laws in the HL.[2]

[1] Lanni has noted that the profession of lawyer did not exit in the classical age. Litigation in classical Athens was administered primarily by amateurs who had an influence on the legal process; and there was no police force to maintain public order or investigate crime; the law nevertheless entitled, and also limited, the victim to seek out witnesses and act as his own private investigator. Adriaan Lanni, *Law and Justice in the Courts of Classical Athens* (Cambridge: Cambridge University Press, 2006), 31-40; Also see Thomas, *Oral Tradition and Written Record in Classical Athens*, 42-43; M. R. Christ, *The Litigious Athenian* (Baltimore; London: The Johns Hopkins University Press, 1998), 14-47; and P. J. Rhodes, "Keeping to the Point," in *The Law and the Courts in Ancient Greece* (ed. E. M. Harris and Lene Rubinstein; London: Duckworth, 2004), 137-58.

[2] Klíma, "La Perspective historique des lois hamourabiennes,"306-07; Steele, "The Lipit-Ishtar Law Code Author(s)," 158-164; Petschow, *Beiträge zum Codex Hammurapi*, 21; S. Demare, "La valeur de la loi fais les droits cunéiformes," 346.

The juxtaposition of old and new rules in the HL not only manifests the changes made in state administration, but also the firm establishment of the authority of written law in Hittite society. Instead of paying no attention to the former written laws, the code has to acknowledge the legislative position of former rules while enacting the new rules, thereby highlighting the distinction of the new rules in the publication. Although the former rules can be understood as customary rules circulated orally, the precise correspondence between the new and old rules suggests that both shared the same authority within the same system. In this regard, the former rules were probably made by the same or a former king in the empire so that the law-code has to acknowledge the position of the old rules on the one hand, and illuminate the new rules in the context of the old rules on the other.

On the other hand, given that state law was automatically superior to royal authority to which the old local systems had to be subordinate, there would be no need either to acknowledge the former written law established by another dynasty, or to present the new rules with the various and contradictory customary rules that the code was entitled to suppress. As so far we have not recovered a law book that clearly refers certain rules back to their customary origins, it would be reasonable to assume that the cuneiform codes normally do not present the state law with the pronouncement of the annulment of corresponding customary rules. The annulment should be seen as automatic once the relevant state laws were promulgated. Thus, while the rules in a law-code are presented as new state policies or certain existing practices in a new form, the absence of certain legal aspects should be seen as the granting of continuity to local systems and customary rules. The distinction between old and new rules in the HL, therefore, should be seen as the further development of written law in the empire so that the code has to annul formerly established laws while enacting new relevant laws.

Admittedly, the other early codes can be taken as the first codification of law in the empires. Laws written without reference back to an earlier one can be taken as brand-new laws in the dynasty, or as an indication that the former rules were less, or locally, established so that there was no need to pronounce their termination in the code. In practice, the codification of the LH took place under the most vigorous king,

Hammurabi, at the end rather than the beginning of his reign;[1] and his later successors might not have been powerful enough to make a substantial change in the system established by their predecessors, or their reigns were too short to codify a new law-code as HL, even though they might have indeed made some new laws in state administration. In fact, plenty of historical evidence implies the decline of Old Babylon after the reign of King Hammurabi. Thus, while these early codes bear no strong literary evidence of a well established law system in the associated empires, it would be sensible to treat these codes as the representatives of stages of written law in different periods and dynasties, rather than considering them totally different in status and function. Considering the literary level of the codes, combined with political and socio-economic factors, Diamond considers Sumerian codes as an early code, LH as central code, and HL as late code.[2] One does not have to agree with the categorisation, but the attempt to include these codes as reflecting a part of legal history is nevertheless plausible.

The importance of these codified rules is the direct connection with royal authority which could have made them superior to corresponding customary rules. Accordingly, the legislative function of these written laws should be placed in a general context of state reorganisation occurring in the associated empires. While the reforming function of individual rules cannot be tested without further information, the common phenomenon of state re-organisation taking place in these empires cannot be denied. These empires, in which the codes were formulated, evidently experienced fundamental change in political and demographic structure. For instance, the codification of the LU has been firmly ascribed to Shulgi by modern scholars, rather than to his father Nammu. The reason is that Shulgi brought the third dynasty of Ur to its zenith of territorial expansion, economic prosperity, and religious and literary flourishing.[3] This suggests that Shulgi could have continued the enterprises undertaken by his father Nammu. The king's various achievements recounted in the prologue may serve as witness to the reforms made by Shulgi in the

[1] Steele has noted that the Hammurabi code stele was not inscribed before the king's 35th year reign according to the historical references in the prologue. See his "The Lipit-Ishtar Law Code Author(s)," 159.

[2] Diamond has identified the codes with different levels of social development: early codes represent barbarism, central codes early civilisation, and late codes the flowering of civilisation. See his *Primitive Law Past and Present*, 9-23.

[3] Jacob Klein, "Shulgi of Ur: King of a Neo-Sumerian Empire," *CANE* 2:843-57; Norman Yoffee, *The Collapse of Ancient Mesopotamian States and Civilizations* (Tucson: University of Arizona Press, 1988), 49; Roth, *Law Collections*, 13.

bureaucracy built by his father Nammu. Likewise, the LL is attached to Lipit-Ishtar who was the fifth king of the Isin dynasty, ascending the throne 85 years after Ishbi-Irra founded the dynasty. The code may be the result of codifying dynastic laws promulgated by those preceding and present kings.[1]

Evidently, in Hammurabi's time, Old Babylon went through significant territory and population expansion, and subsequent administrative centralisation transformed the former city-state into an imperial system. This political transformation must have entailed the introduction of officially recognised values and social practices to the diverse populations of the vast empire. In this context, the code may reflect such re-organisation of state administration. Indeed, the prologues of certain cuneiform codes recount macro-reforms and infrastructure made by the kings as their extraordinary contribution to the nations, and dedicated to gods as in the LU and LH, which clearly serve as propaganda for their kingship and for the establishment of justice in the empires that is further actualised and represented by the rules included in the codes.

The political connection between the development of written law and social change can also be seen in other political regimes in the ancient Near East. M. Gagarin maintains that the emergence of written laws in Greece reflects the development of the *polis* and its increasing interference with the lives of its citizens.[2] According to Josiah Ober, the laws formulated for establishing an aristocratic society in Athens from the time 700 BCE in fact were to replace, rather than to reinforce, the long ruling monarchic tradition.[3] Likewise, the enactment of new state law in ancient China often marked a new dynastic regime that attempted to re-organise state administration differently from that of a previous, overthrown dynasty.[4] The difference between the cuneiform codes, therefore, seems to be the extent of the legislative function, rather than the legislative status, of the codes. As a whole, the general trend that written law led to, or reflected, socio-political and administrative reorganisation can be verified.

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[1] Steele, "The Lipit-Ishtar Law Code Author(s)," 159.
[2] Gagarin, *Early Greek Law*, 121-46.
[3] Josiah Ober, *The Athenian Revolution: Essays on Ancient Greek Democracy and Political Theory* (Princeton; N.J.: Princeton University Press, 1996), 32-52.
[4] Some early Chinese laws have been reconstructed from later state document which assesses the governance of a former dynasty. See Liang, "Explicating 'law', 84-85.

3. The Imposition of State Sanctions

A number of scholars have also noted that state law distinguished itself from primary dispute resolution with the political imposition of state regulated sanctions (see chapter 1.C.1). Unlike negotiating a settlement between the two parties involved in a kin-based community, the criminal laws and the rules prescribing excessive compensation for injuries and damages can be seen as the manifestation of the exercise of state power in the administration of justice.[1] In this respect, the cuneiform codes indeed include rules imposing capital punishment for serious crimes, which are largely placed as the first part of the corpus in LU and LH (LU 1,2; LH 1-34). Other rules, whose penalties consist of the maximum fine and compensation for property damage or bodily injuries, rather than a simple compensation approximately equal to the loss or damage caused, also suggest the imposition of state justice.

However, since the models of judicial exercise in a king-based community may have varied in ancient times from primitive democracy to a mini-totalitarian regime, we cannot conclude that customary rules might never be involved in pecuniary or corporal punishment. A handy example is the exercise of *talion* in Amorite society. The distinctive difference, therefore, is that state justice placed importance on written law and legal procedure. State-established justice thus would maintain state-recognised values and take the right of capital and heavy punishment away from the hand of local leaders; a codified law-book could have correspondingly provided uniform criteria for the fairness and consistency of an imperial legal system. While the rules of the code could have suppressed diverse local norms, judicial mechanism would make law enforcement politically possible. Thus, it is important to see that these rules are not simply imposed state regulated sanctions, but also bore an ethos behind their formulation.

Comparative studies reveal that crimes such as theft (see LH 7, 8, 9, 10, 14, 21),[2] robbery (22), looting (25), receiving of stolen goods, helping escaped slaves (15, 16, 19) and deceit for gain (11, 108, 227) are considered as capital offences.

[1] Early reconstructed Chinese laws are understood to derive from the practices of various punishments that continued to be the salient feature of state law in imperial China. Ibid., 75-79.
[2] The crime of theft in Hammurabi's Laws has wide scope; it could include a number of ways leading to unlawful gain.

Such severe punishments were imposed to ensure security in the community by deterring certain crimes – this is still observable in modern legal culture. At the same time, the laws were also evidently presented with the aim of protecting the rich elite. These trends are seen in the HL as well, wherein, in spite of the preference for fines as opposed to the death penalty, the punishment for a thief remains severe in terms of financial compensation.[1] These rules reveal that the general purpose of imposing a severe punishment for a certain type of offence was to suppress certain types of criminal acts, thereby maintaining social security.

In spite of the difficulty in discerning the origins of these rules within the associated society, a certain level of sophistication and the derivation of common practices can be tested in the codes. Roth has noted that some rules in the LH in effect deal with the issue of honour and shame in society, rather than physical or financial aspects of crime and punishment.[2] Indeed, the importance of these rules could have been more than the face value given in the codes, but was also characterised by a variety of social values concerning social status and relationship.[3] The rules seemed to protect the honour of the victims and/or vulnerable groups in society, marking wrong and right, good and bad morally and politically. The death penalty for adultery might reflect accepted value in a kin-based community. Its inclusion in the codes seems to introduce the custom as nation-wide recognised law. However, more than simply adopting existing customs, the codes may have modified and sophisticated the rule in various ways. As Yaron has observed, the death penalty was only given to the female adulterer in LE (28) (also in LU 7), but equal punishment was prescribed for both the adulterers in LH (128, 129).[4] Yaron has noted that, rather than simply adopting the prevailing practice of *talion*, certain rules in LH (196, 197, 200) in effect demonstrate the restriction of talionic retribution according to social classes.[5] On the other hand, the preference for financial

[1] Hoffner, *The Laws of the Hittites,* L45, 49, 57-70, 81-82. For physical punishment, see L95, 99.
[2] See her "Mesopotamian Legal Tradition and the Laws of Hammurabi," *CKLR* 71 (1995-96), 24-37.
[3] V. H. Matthews points out that for traditional societies social justice and sexual conduct were the basis of morality; correspondingly, the laws dealing with virginity, marriage, divorce, infidelity, adultery, promiscuity, and rape are not only concerned with the sexual relationships of individuals, but also with the social and economic relationships between the households as a whole. See his "Honor and Shame in Gender-Related Legal Situations in the Hebrew Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (eds. V. H. Matthews, B. M. Levinson and T. Frymer-Kensky; JSOTSup 262; Sheffield: Sheffield Academic Press, 1998), 97-112.
[4] R. Yaron, "Early Mesopotamian Collections of Laws," in *La Codification Des Lois Dans l'Antiquité* (Edited by Edmond Lévy; Paris: CRPOGA Strasbourg, 2000), 72.
[5] Ibid., 67.

compensation for bodily harm in earlier codes (LU 18-22 and of LE 42-46) accompanies rules imposing capital punishment for homicide (L1), various rebellions against the crown (2), raping virgin girls (6), adultery committed by women (7). These instances indicate that, rather than restating existing practices, the cuneiform codes are more likely to be the result of either sophisticating or reforming prevailing customs to meet social and ideological development. Thus, in spite of the influence of customary norms in the law-making, these rules became the imposition of recognised values.

It is equally interesting to note that, while the letter of the rules indicates certain primary adjustments or sophistication introduced into the new system, the failure to restate prevailing customs could have implied the tolerance of existing practices. In fact, certain prevailing practices are surprisingly not included in the codes. For instance, no rule in the LH articulates the general *talion* rule of thumb in Old Babylon that the death penalty should be made for homicide, as it does in LU (L1). In spite of this obvious absence, the opening rules (1 and 3) do hint at the practice that capital punishment was taken for granted for homicide. Silence in the code as an indication of acceptability is matched by its silence on the establishment of judicial institutions within the empire that would doubtlessly have existed and were operated as state mechanism. Thus, the evidence suggests that the rules in the codes are more likely to reflect reforming, sophisticating and developing of existing customary rules rather than simply restating them. As state law, most important is that royal authority and the administration of justice could make the sanctions prescribed in the codes compulsory, thereby averting the arbitrariness and discretion of self-executed justice in individual ethnically-orientated communities.

4. The Development of Legal System

In contrast to Westbrook's interpretation of the difference between the cuneiform codes as cultural preference, other scholars take it as a sign of legal evolution in the history of the ancient Near East.[1] Certainly, each code possesses its own cultural and legal characteristics while sharing common literary conventions and legal interests. Driver and Miles have noted that the LH, overall, appears rather cruel

[1] The preference can be seen in corporal punishment in LH and pecuniary punishment in Sumerian codes. Westbrook, "What is the Covenant Code?," 20-23.

in comparison with LE, yet relatively lenient compared to the AL.[1] Rofé also points out that the severe punishments in a code might not necessarily represent an older stage of the formulation of law, nor milder punishments more recent.[2] The question is that not all differences can be well explained according to a model of legal or cultural preference. Legal evolution in ancient times might not be as speedy as any modern law; the trend of legal evolution, however, is traceable both from the texts of codes and the reconstructed administration of justice in Old Babylon.

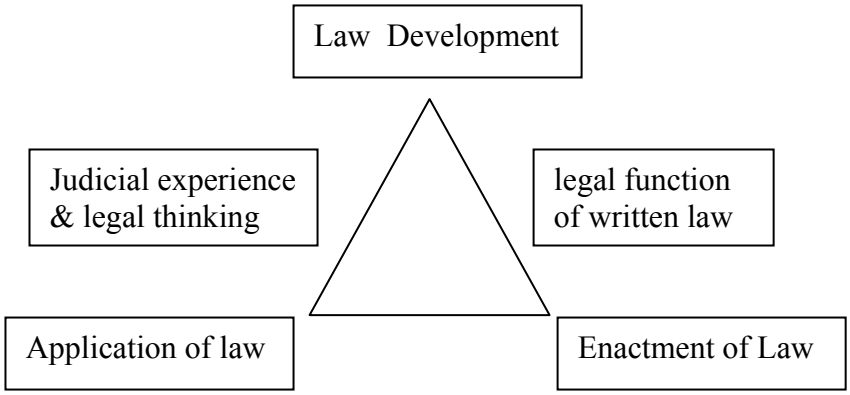
Noting that LU (15-19) and LE (42-48) prefer a monetary fine for assault, Diamond and Finkelstein point out that the introduction of the laws of *talion* into the LH can be seen as an advance in the history of jurisprudence, for it marks the beginning of the state's protection of its citizens, especially of those of the *awīlum* class, that an assault against an *awīlum* was no longer to be considered a purely private affair to be settled by the offering of monetary compensation to the victim, but a crime that the state viewed itself responsible to act against to punish the offender.[3] Tikva Frymer-Kensky's comparative analysis demonstrates that while having their origins in western semitic culture, the talionic laws in the LH show the imposition of talionic retribution reached a logical extreme of vicarious punishment (L196, 197, 200, 116, 210, 231-232), and that equal retribution for witnesses/accusers (LH 2 compared to LU 10) is an innovation in LH, compared to those earlier Mesopotamian law-codes.[4]

Yaron's comparison between LE and LH also manifests the increase in the social division between the population of *awilum* and of *muškenum*, and in legal sophistication and development in the LH.[5] These unmistakably reflect the general social and legal development from a traditional autonomous community to a centralised and formalised judicial system in a vast empire. Legal responses certainly became mature and sophisticated through the interaction between the accumulation of judicial experience and the maturity of legal thinking in a new administrative framework. As a literary result, the code appears more elaborated than earlier known

[1] The social rules in AL are rather strict, especially those regarding woman's conduct that comprise a large portion of the code. See Driver and Miles, *The Assyrian Laws* (vol.1; Oxford: Clarendon Press, 1935), 12-14.
[2] A. Rofé, *Deuteronomy*: *Issues and Interpretation* (London; New York: T&T Clark, 2002), 209.
[3] A. S. Diamond, "An Eye for an Eye," *Iraq* 19 (1957): 151-55; J. J. Finkelstein, "Ammiṣaduqa's Edict and the Babylonian Law Codes," *JCS* 15 (1961): 98.
[4] Tikva Frymer-Kensky, "Tit for Tat: The Principle of Equal Retribution in Near Eastern and Biblical Law," *BA* 43 (1980): 230-234.
[5] Yaron, "Early Mesopotamian Collections of Laws," 65-76.

codes, both in quantity and quality. This legal and literary development, on the other hand, would signify the increase in social function of written law in Old Babylon. Unlike the administration of a city-state, which allowed traditional local systems and practices continually to strive under the supervision of state administration, the transformation of a city-state to a centralised monarchy would change the administrative structure of society fundamentally. This probably resulted in an enhanced social function of written law. Comparison between LL and LH suggests that the earlier code appears to have been considerably shorter than that of Hammurabi and that while the LH was literarily framed in accord with the Sumerian code it evidently makes considerable alteration and emendation.[1] Thus, the law-codes can be evidence for the development of legal system in a particular empire and for the development of statehood in general.

The interaction between the increase in social function of written law and the increase in judicial experience, and the result in the quantity and quality of the code can be illustrated with a triangle.



Explicitly, the increasing sophistication and more comprehensive coverage in the later code suggest the development of state law from scattered royal decrees to codified laws in general, and the increase in the significance of written law in particular. The more the administration of justice depended on written law, the more written law would be demanded in the system. Via such effective interaction, judicial experience and legal thinking would have played a crucial role in the development of both legal system and written law. This is evident in the LH and HL. In the former,

[1] Steele, "The Lipit-Ishtar Law Code Author(s)," 162-64.

we can see ample literary evidence of actualising and systemising legal reasoning with the elaborated rules extending common legal situations to various circumstances within a similar category.[1] The comparison made between LE and LH and MAL, on the other hand, as concluded by Yaron, demonstrates the lack of comprehensiveness of the early code, LE, wherein the important subject matters, e.g., lease, partnership, adoption, and succession, are largely absent, while those concerned only touch isolated, marginal issues.[2]

In the HL, strong evidence can be found both for the development of written law and the legal system. The juxtaposition of the old and new rules in the code implies that the position of written law had been so firmly established in Hittite society that the code had to make distinction between the earlier and later laws in order to provide some context for determining how more recent enactment affected earlier laws.[3] This legal trend can also be seen in ancient Athens in the fifth century, wherein new legislation was enacted with some reference to existing legal texts in order to establish some context for determining how more recent enactments affected earlier legislation.[4]

Further, the cuneiform codes demonstrate the growth of the importance of evidence in judicature. The use of evidence or a witness in litigation which appears not to be a concern in the LU, or as a mere principle in the LL (17), is seen as vital in the judicial system reflected in LH (see 1, 2, 3, 4, 7, 9, 10, 11, 12, 13, 113). The development of the legal system in Old Babylon is evidently marked by the increasing importance of written evidence. In the LU, lawsuits seem to largely depend upon oral testimony rather than written evidence. Except in the case of the marriage contract, the code does not mention any other written evidence, nor ever provide any efficient measure to test the credibility of the witness other than requiring the witness to take an oath in the court or the like (28, 29). In the LL, while indicating that written evidence for contracting became common in society where serious agreements or renting were concerned (5, 7, 20b, c 34, 35, 36, 37), oral witness still seemed common in lawsuits at the time (11, 12), and only one rule

[1] For an analysis of the motive clauses in the cuneiform codes, see R. Sonsino, *Motive Clauses in Hebrew Law: Biblical Forms and Near Eastern Parallels* (SBLDS 45; Chico, California: Scholars Press, 1980), 153-72.
[2] For a detailed treatment, see Yaron, *The Laws of Eshnunna*, 52-71.
[3] Hoffner, *The Laws of the Hittites*, 95.
[4] See Sickinger, "The Laws of Athens: Publication, Preservation, Consultation," 98.

clearly refers to written evidence in a situation where oral evidence appeared unreliable and disputable (31).

The rule 123 in LH, which has been used by Bottéro as evidence for an absence of logic in the code, is in fact concerned with the difficulty of settling disputes between two parties over the failure of property safeguarding. The main purpose of the provision, as Bottéro has noted, is not to give a verdict so as to advise judges how to deal with this particular type of dispute, but to elaborate a judicial principle that states that written or oral evidence in this type of dispute becomes compulsory in lawsuits: a court no longer dealt with the accusations without evidence, even in those disputes largely resolved by means of financial compensation.

This principle, so crucial to LH, is already made clear in the beginning of the code (see LH 1, 2, 3, 4), wherein evidence for the accusations of serious crimes is required. The requirement of written or oral testimony is also found elsewhere, especially in cases involving watching over another's property and commercial transactions (see LH 7, 9, 10, 11, 12, 13, LNB 5). Distinctions are also made between lawsuits for which there is and for which there is not testimony (LH 123, 124).[1] A similar purpose is also observable in LH 250, which states that no compensation can be legally considered for damage or death caused under an unpredictable or uncontrollable circumstance.[2] These individual rules unmistakeably point out that the LH is not a collection of random judicial decisions, nor does it consist of hypothetical laws deduced from actual cases for academic creativity. Instead the LH demonstrates certain newly-established orders and principles intended to reform legal system and certain aspects of society in order to enhance public awareness of the improvements. Thus, without presupposing that cuneiform law served as a "collection of judicial decisions," we can better assess its status and function in Mesopotamian society both as part of the governing system and as an adjunct to the administration of justice.

Other aspects of legal development can be seen from the administrative rules in LH. Evidently, the code provides certain measures to cope with judicial corruption (5), defines the responsibility of city governors for the crimes committed within their administrative territories (23, 24), draws the line between responsibilities and

[1] Richardson, *Hammurabi's Laws*, 80.
[2] Ibid., 111.

prerogative interests of those who carry out royal missions, e.g. a royal soldier, *rēdûm*, in varying circumstances (26-41). These rules can be counted as administrative laws in a modern sense; their existence signifies the extent to which the legal system was developing and that governing bodies were being constituted with recognised positions and responsibilities. In this regard, legal development in Old Babylon appears to coincide with the legal capacity in the comprehensiveness of the code and with the improvement of the legal system that is reflected in the way certain legal concepts were put into practice.

5. Cuneiform Rules in Context

The codes, as a state law-book, have to demonstrate a certain level of consistency and systemisation between the rules. Although it is difficult to abstract the system of the formulation from the text, the apparent inconsistencies and contradictions between individual rules illustrated in Bottéro's analysis need not be a problem in their own contexts, if we place them in the light of material life of that time.

On the surface, the huge gap in the sanctions prescribed in rules 8 and 259 appears illogical and the severity of penalty seems out of proportion to the crime described in rule 8. This could lead to the false impression that they were two unrelated case laws carelessly incorporated into the code.[1] We must not be so hasty to jump to the conclusion, however, without investigating the descriptions of the offences in the light of the economic realities of how property and people were valued in Mesopotamia.

First and foremost, we need to be aware that the code distinguishes offences according to their severity. Protases are linked together on the basis of how relevant offences were rather than due to similarities in their nature. Although some scholars have perceived a linear progression from the modern numbering system added in the translation,[2] they are less aware that major categories distinguish greater and lesser offences. Thus, it would be difficult for the reader to apprehend the logical relationships between the various components of the rules. In fact, the first unit of the code (1-34) begins with serious offences and criminals largely punished with the

[1] Bottéro, *Mesopotamia*, 162-63.
[2] Ibid., 173.

death penalty. The second major unit deals primarily with common disputes arising from an agricultural and husbandry community and its households, with financial compensation or non-capital punishment as the usual penalty.[1] It so happens that two types of stealing are categorised separately: one is considered a serious crime while the other is treated as a civil dispute. The value of the items stolen appears to determine the severity of the offence and its penalty.

Further, it can be verified that in Mesopotamia, animals, such as an ox or cow, sheep, pig or donkey, even slaves – were considered as the most valuable movable property.[2] The value of the animals could have varied in accordance with their condition and species. Similarly, boats, as the main means of transportation in the two great rivers in Mesopotamia, were also highly valuable. Apparently, the value of such property is also reflected in other cuneiform codes. Correspondingly, the frequent occurrence of the laws concerning a goring ox does not have to be a result of literary or legal transplants as many scholars have maintained,[3] but can be because of its value and importance in agricultural and husbandry communities. Evidently, the theft of gold, silver, slaves, oxen, sheep, donkeys, pigs and boats is considered a serious offence in LH (6, 7, 8). In contrast farming equipment, such as we would call a plough, appears not to have been highly valued. Compared with animals and other moveable property kept in houses, farming tools prior to the Iron Age were probably so clumsy and unsophisticated that Mesopotamian farmers would have left them in the field during busy seasons.

In this material culture, the act of stealing an animal or a boat was regarded as a criminal offence because of the market value of the stolen items and the nature of stealing from a private place. In contrast to this, the theft of a common farming tool from an open field would be seen in an agricultural community as a kind of mischief, not as a crime. The limited fine imposed for minor theft indicates the law's

[1] Some minor offences scattered in the unit concerned with serious offences are probably topically linked with more serious offences. The addition of these minor rules may have been done with the intent of being thorough. Another reason for their presence in the first major section seems to be the offences involved prominent individuals, such as judges (5), governors (22, 23) and royal soldiers (27-32).

[2] The use of oxen for ploughing is well attested in cuneiform texts and sculptures. The importance of draught animals in ancient agricultural society is well illustrated by 'Ox Laws' in Mesopotamian law-codes, LH, LL and HL. Animals were also the source of meat, leather, wool and milk products. See D.T. Potts, *Mesopotamian Civilization: The Material Foundations* (London: The Athlone Press, 1997), 82-97; and P. J. Postgate, *Early Mesopotamia*: 158-66.

[3] See the review and analysis by D. P. Wright, "The Compositional Logic of the Goring Ox and Negligence Laws in the Covenant Collection (Ex 21:28-36)," *ZAR* 10 (2004): 93-142.

intention was to discourage mischievous behaviour on the one hand and maintain fairness between the two parties on the other. Thus we can say that the penalties imposed in each offence are based upon the value of the items stolen rather than upon the nature of the action in itself. Accordingly, the arbitrary nature of each rule has to be interpreted in its own social context and material culture. Likewise, other seemingly inconsistent rules should also be examined in their social context first before reaching a conclusion.

Conclusion

My review and analysis of the literary and legal characteristics of the ancient law-codes suggest that the codes were made for state administration and reorganisation in general, and the laws would have come from different authoritative sources in contemporary societies. While the legislative status can be verified through the association of royal promulgation and publication of the codes, and the development of law and legal system can be discerned from the content of law, the real question in modern debate as to the nature and function of the ancient law, therefore, should be no longer the legislative status of the codes, but how the laws could have operated in their contemporary societies.

Correspondingly, a better understanding of the actual function of the ancient codes should be in relation to royally established justice systems and their contemporary kings' exercise of control over national affairs. In view of all these, it would be necessary to place the formulation and exercise of the ancient codes in their political, social and conceptual contexts in order to reconstruct the relationship between the operation of legal system and common concepts of justice and kingship in monarchical governance.

Chapter Three
King, Law and Monarchy in the Ancient Near East

Introduction

The recovered prologue-epilogue frames of certain cuneiform codes are concerned with the legitimacy and exercise of individual kingship in relation to the concept of god in the ancient Near East. In the prologues, the kings declare themselves as a legitimate ruler appointed by the council of gods, thereby responsibly ruling the nations with justice in order to fulfil their duties to the gods. The cuneiform prologues thus obliged the people to conform to the rules established by the kings. The non-legislative interpretation, however, treats the framework either as a literary device to enhance scribal credit or as royal propaganda of the individual kings' achievement (see chapter 2.A), regardless of the textual, conceptual, political association between the prologue-epilogue frame and the corpus of the rules.[1] It is necessary, therefore, to investigate the conceptual relations between the gods, kings and good governance in the ancient Near East in order to reveal the interaction between the exercise of human kingship, the formation and the position of law in the empires.

A. Conceptual Relations between a King and Gods

Kingship apparently was the typical polity perceived for both divine and human realms in ancient Near East. Evidence suggests that the concept of sacred kingship prevailed in Ugarit, Egypt and Mesopotamia.[2] However, the office of

[1] M. T. Fögen has noted the differences between law propaganda in different socio-political systems and circumstances, and considers democratisation as the fundamental cause of the decline of the prologue in modern legislation, as "the ideal of democracy, spreading out in most European countries in the course of the nineteenth century, eliminated the art of persuasion by preambles because there was nobody left to be convinced of that which he himself had decided." See his "The Legislator's Monologue: Notes on the History of Preambles," *CKLR* 70 (1994-95): 1593-620, especially, 1607-10.
[2] H. Frankfort, *Kingship and Gods: A study of Ancient Near Eastern Religion as the Integration of Society and Nature* (USA: University of Chicago Press, 1948); S. H. Hooke, ed., *Myth, Ritual, and*

human kingship appeared different from one culture to another, or from one period to another within a same culture. Michael Rise has interestingly noted that the perception of cosmos and human society in a particular region had been impacted and cultivated primarily by its ecological and political environments. The two societies, Egypt and Sumer, initially developed in parallel, but were wholly disparate in the course of their history.[1] The disparities between them are attributed by modern scholars to the topographical and ecological differences found in Mesopotamia and in ancient Egypt. The peculiar natural environment in Egypt insulated Egyptians from any pressure of other peoples for centuries prior to the powerful Greek invasion and influence, and the people enjoyed the means provided by the regular flow of the Nile for a stable and standard livelihood.[2] Egyptians thus believed that they were the favoured children of the gods, living in paradise. Accordingly, the primary worldview and the concept of kingship were shaped in this distinctive environment; and the monarchy remained exceptionally long and stable with the absolute power of Pharaoh and strict socio-political hierarchy created in accord with Egyptian concepts of cosmos.[3]

1. The Concept of Kingship in Mesopotamia

While ancient Egyptians had the constant benefit of natural resources, relatively unvarying ideology and political solidarity over more than three thousand years, Mesopotamians appeared frequently to struggle with their political upheavals and environmental woes from two turbulent rivers and a barren, unpredictable flood plain.[4] They thus perceived a restless cosmos and divine world as a reflection of the natural and social realities they had experienced.

Kingship: Essays on the Theory and Practice of Kingship in the Ancient Near East and in Israel (Oxford: Clarendon Press,1958); S. N. Kramer, "Kingship in Sumer and Akkad: The Ideal King," and M. T. Larsen, "The City and its King: On the Old Assyrian Notion of Kingship," in *Le Palais et la royauté: Archéologie et Civilisation* ((ed. P. Garelli, RAI 19; Paris: Geuthner, 1974), 163-176, and 285-300; G. W. Ahlström, *Royal Administration and National Religion in Ancient Palestine* (Studies in the History of the Ancient Near East 1; Leiden: Brill, 1982), 1-25.

[1] Michael Rice, *Egypt's Making: The Origins of Ancient Egypt, 5000-2000 BC* (London and New York: Routledge, 1990), 38.

[2] For a detailed description of the cultural ecology of the ancient Egypt, see K. W. Butzer, *Early Hydraulic Civilisation in Egypt: A Study of Cultural Ecology* (Chicago: University of Chicago Press, 1976).

[3] Rice, *Egypt's Making*, 1-22, 34-39.

[4] R. M. Adams has noted how ecological environment could have impacted the pattern of human settlement and social development in Mesopotamia, see *Heartland of Cities: Surveys of Ancient*

According to Frankfort, Mesopotamians interpreted the perpetual state of unsettlement of the earth as the direct consequence of the incessant conflicts and consequent wars among the gods in heaven. Likewise, as the reflection of the strife between divine and demonic powers, between cosmic and chaotic powers, the cosmos was full of crisis and moved in cyclic succession as reflected by the natural seasons.[1] In the meantime, Mesopotamians also suffered from constant political divisions and strife from the city-state society. Baines and Yoffee point out that city-states, which remained an irreducibly essential quality of Mesopotamian civilisation, were the arenas for a normative and constant struggle of power and interest between royal authority and local autonomy, between state and temple, so that no political unity was realised in Mesopotamia prior to the imperial successes of Sargon (2350 BCE).[2] Lawson has also noted that Mesopotamians took the precariousness of political and natural climates as inevitable and accepted it as fate, *šīmtu*, which was believed even to decree the fate of the gods who were in charge of different dominions of the universe and mankind's destiny. Nevertheless, the chaotic situation could possibly be conquered by a recurring miracle of the intervention of one powerful god who suppressed his divine opponents. When order was restored in the divine world, so it was in the natural and human worlds.[3] This conceptual correlation between divine and human political worlds is important for us to understand, as is divine retribution for the wrongdoing of humanity in general and the rise and decline of the office of human kings in particular (see chapter 5.H).[4]

In spite of the variation and evolution of the concept of kingship, the essential elements of the concept were retained in different forms of kingship in the ancient Near East. That is, a king's major duty was to maintain harmonious relations between human society and the divine powers in the ancient Near East. A king was thus expected to honour the gods who had placed him on the throne by dedicating temples and maintaining cults to secure divine blessings upon the land, to deliver the people militarily from their enemies, and to establish the administration of justice in

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Settlement and Land use on the Central Floodplain of the Euphrates (Chicago: University of Chicago Press, 1981); Postgate, *Early Mesopotamia*, 173-90.

[1] H. Frankfort, *Kingship and the Gods,* 1-12.

[2] John Baines and Norman Yoffee, "Order, Legitimacy and Wealth in ancient Egypt and Mesopotamia," in *Archaic States* (Santa Fe and New Mexico: School of American Research Press, 1998), 207-216.

[3] J. Lawson, *The Concept of Fate in Ancient Mesopotamia of the First Millennium: Toward an Understanding of Šīmtu* (Wiesbaden, 1994), 127-33. Also see Postgate, *Early Mesopotamia*, 266-74.

[4] Blenkinsopp, *Wisdom and Law in the Old Testament*, 46-51.

the courts with law and order.[1] In this context, as Baines and Yoffee have particularly noted, establishing social order, legitimatising the kingship, and controlling the distribution of natural resource and local products would be absolutely practical in the establishment and development of ancient statehood.[2] The composition of a law-code as a means of restoring social order, therefore, should be interpreted in these political and ideological contexts.

Admittedly, legitimacy of an individual reign would have been necessary to those kings who established, or expanded, their regime with military conquest, in order to justify their leadership and demand acquiescence from those subjugated peoples. Liverani has pointed out the close correlation between success and legitimacy: while legitimacy means a correct chain of relationships from god to king and from king to people, success would generate legitimacy and acceptance since success was considered only possible with divine approval and help.[3] The reorganisation of state administration, the relocation of the state capital and the creation of new titles in the first empire established by Sargon in Mesopotamia, as Liverani comments, all signified the central message that the House of Akkade was not just another political entity, but the legitimate political power ruling over the whole of Mesopotamia.[4] This can also be seen in the Amorite king Hammurabi who had created a strong resemblance between his own accession and the elevation of city god *Marduk* to state god. The ascription of the supreme position of *Marduk* in place of the chief god *Enlil* to the bravery and successful military leadership of *Marduk* against the forces of chaos[5] seemed to deliberately correspond with the king's success in numerous military conquests and the establishment of his own kingship. The correspondence between them strongly suggests that ideological justification of newly rising leadership could have lent divine support to both the king's office and

[1] Postgate, *Early Mesopotamia*, 262-66; and M. E. Polley, *Amos and the Davidic Empire: A Socio-Historical Approach* (New York& Oxford: Oxford University Press, 1989), 17-27.
[2] Baines and Yoffee, "Order, Legitimacy and Wealth," 212.
[3] M. Liverani, "The deeds of Ancient Mesopotamian Kings," *CANE* 4:2359-60.
[4] M. Liverani, "Critique of Variants in the Titulary of Sennacherib," in *Assyrian Royal Inscriptions: New Horizons* (ed. F. M. Fales; Rome: Istituto per l'Oriente, 1981), 234-44.
[5] For an interpretation of the emergence of new leadership in the divine council in place of the old and inert gods in the Mesopotamian myths, see F. M. Cross, "The 'Olden Gods' in Ancient Near Eastern Creation Myths," in *Magnalia Dei*, *The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al, Garden City, New York: Doubleday, 1976), 329-38, especially 332-33.

the political hierarchy created by him.[1] This common belief apparently continued to be upheld by late Neo-Assyrian and Neo-Babylonian kings who regarded themselves as the faithful shepherd, king of justice as declared in the prologue-epilogue frame of the cuneiform codes.[2]

Nevertheless, the close ideological link between the office of human king and the state god did not prevent the Mesopotamian kings from attributing all listed achievements to themselves in the codes.

2. Kingship Reflected in the Law-Codes

The essential elements of the concept of human kingship are evidently recaptured in these recovered prologues and epilogues of the cuneiform codes. The legitimacy of individual kingship, the establishment of the administration of justice, and the invitation to divine patronage of the systems displayed in the frame all closely correlated with the exercise of human kingship. This can be seen clearly from the Louvre Stele which illuminates the coordination between gods and the king both in words and in sculptural art. The interpretation of the stone monument may represent variants; the rich symbolism of the sculpture, according to a number of scholars, mirrors the understanding of the joint responsibility between gods and the king in the administration of justice.[3] The moon, stars and rays of sunlight on the top of the monument and the presumed figure of the sun-god Shamash unmistakably exhibit him as the patron of justice. The king who appears in turn before gods is

[1] M. Liverani, "The Deeds of Ancient Mesopotamian Kings," *CANE* 4:2353-66; Postgate, *Early Mesopotamia*, 270-73. A list of deceased ancestors of the king Ammişaduqa (1647-26 BCE) indicates that the Amorites imposed their distinctive ideology on the Babylonians so that the divine right to kingship was never again so firmly based on a specific family line. See J. J. Finkelstein, "The genealogy of the Hammurabi Dynasty," *JCS* 20 (1968): 95-118; W. G. Lambert, "Another look at Hammurabi's Ancestors," *JCS* 22 (1968): 1-2; idem, "The Seed of Kinship," in *Le Palais et la Royauté: Archéologie et Civilisation* (ed. P. Garelli, RAI 19 ; Paris: P. Geuthner, 1974), 427-40; idem, "Kingship in Ancient Mesopotamia," in *King and Messiah in Israel and the Ancient Near East: Proceedings of the Oxford Old Testament Seminar* (ed. John Day; Sheffield: Sheffield Academic Press, 1998), 60-66.

[2] Hayim Tadmor, "Sennacherib, King of Justice," in *Sefer Moshe: The Moshe Weinfeld Jubilee Volume: Studies in the Bible and the Ancient Near East, Qumran, and Post-Biblical Judaism* (ed. Chaim Cohen et al; Indiana, Winona Lake: Eisenbrauns, 2004), 385-90.

[3] For a conclusive comment, see M. T. Roth, "Mesopotamian Legal Traditions and the Laws of Hammurabi," *CKLR* 71(1995-96): 22.

seeking beneficial blessings upon the earth on behalf of his people, and is appointed by the gods to create a prosperous, justice-governed human society.[1]

Correspondingly, the words of the prologue-epilogue appear to articulate the symbolic meanings of the sculpture that the code was formulated by the legitimate king to establish the administration of justice throughout the land; and the rules included in the code should be understood as a means of realising such a political and administrative mission. Some scholars, however, take these words as political propaganda without giving any credence to the characteristic of a law-code.[2] Finkelstein considers the LH as royal propaganda, boasting King Hammurabi's success in fulfilling the role of just king to his subject people, his successors and the gods. The reasons are that the conquests of the king depicted in the prologue could not have been accomplished till later in his reign, and that the composition of the code is presented for future kings rather than for contemporary society. Nevertheless, royal propaganda of the king's achievement does not contradict the status of the rules in relation to royal administration, but in fact reinforces the authority of the rules as the orders established by the capable king, thereby obliging future generations to uphold them.

In fact, the casuistic forms of the majority of the rules imply that actual precedents established either by the king or by royal judges had been purposely generalised to serve a general judicial purpose. Thus, these rules cannot be taken as an inventory of the king's concrete achievements in line with the king's military conquests listed in the prologue, but are more like the social order established by the king or royal judges corresponding to his duty of delivering just governance. It is not difficult to see therefore that it is the modern categorisation that plays a role in the dissociation made between royal propaganda and the royal establishment of the justice system, and between the prologue and the central part of the code.

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[1] Lambert, "Kingship in Ancient Mesopotamia," 54; idem, "Sumerian Gods: Combining the Evidence of Texts and Art" in *Sumerian Gods and their Representations* (ed. I. L. Finkel and M. J. Geller, Groningen: Styx Publications, 1997), 5; J. V. Canby, *The "Ur-Nammu" Stela* (UMM 110; Philadelphia: Pennsylvania Museum of Archaeology and Anthropology, 2001), 8-10; Kathryn E. Slanski, *The Babylonian Entitlement Narûs (kudurrus): A Study in Their Form and Function* (Boston, MA: American Schools of Oriental Research, 2003), 259-66.

[2] See Finkelstein "Ammiṣaduqa's Edict," 91-104. E. Otto also thinks that the cuneiform law collection was used for purposes of royal propaganda by later framing the rules with the prologue and epilogues. See his article "Kodifizierung und Kanonisierung von Rechtssätzen in Keilschriftlichen und Biblischen Rechtssammlungen" in *La Codification Des Lois Dans l'Antiquité: Actes du Colloque de Strasbourg 27-29 novembre 1997* (ed. Edmond Lévy; Paris: CRPOGA Strasbourg, 2000), 77-93.

In fact, the prologue can be seen as royal propaganda for the king's kingship in general and the publication of the laws included in the code in particular. Rather than merely boasting the king's success in military conquest, the list of the king's achievements in the prologue appears to prove divine appointment of the king's kingship, thereby cultivating a docile spirit for his leadership and convincing the subjugated peoples and nations to accept the rules enacted for national reconstruction. In the context that the king had conquered many small nations and conjoined them as a powerful empire, the propaganda of the legitimacy of his kingship and of his promise of establishing a just society would be vital for him to gain wide support from those subjugated nations, especially those who were politically, economically and ethnically vulnerable groups.[1] The publication of the rules which immediately follow the prologue is thus directly linked with royal administration of the vast and united empire. The nearly three hundred rules in the code apparently manifest the centrality of the rules both in the code and in the political framework of royal administration. The invitation to divine patronage of the rules in the epilogue further demonstrates the importance of the code to the stability and unification of the empire. Correspondingly, the provocative invitation in the epilogue cannot be literarily interpreted as a mere protection to the stone monument itself, but also to the authoritative text inscribed on the stone.

Roth has noted three types of audience particularly invited in the manifestation of the administration of justice: the gods, especially the chief god *Marduk* and god of justice *Shamash*, the oppressed and the victims of miscarriage of justice, and the subject peoples and vassal rulers in general.[2] Yet, as a whole, the frame of the code is concerned with the sustenance of social order, urging the ruling class, successors of the king, to uphold the values and system established by him. Thus, the prologue, which manifests the king's kingship with the approval of the council of gods and with the king's accomplishments in bringing peace, order and prosperity to the empire, would demand acquiescence from all subjugated peoples in

[1] In the epilogue, the king proclaimed the peace he secured, "…I annihilated enemies everywhere, I put an end to wars, I enhanced the well-being of the land, I made the people of all settlements lie in safe pastures, I did not tolerate anyone intimidating them. The great gods having chosen me, I am indeed the shepherd who brings peace, whose sceptre is just…" cited from Roth's *Law Collections*, 133.

[2] Roth, "Mesopotamian Legal Traditions," 17-18.

the office of the king.[1] Certain diplomatic correspondence recovered from Hammurabi's time provides a pragmatic picture of the king's administration. Instead of either placing the conquered nations under direct royal administration or retaining a semblance of local self-government, the king, in effect, annexed them totally and abolished the kingship of these defeated kings, thus unifying these small and diverse nations into one vast empire.[2] Such military unification is explicitly hailed in the prologue as the king's extraordinary achievements and as the very evidence of divine approval of his kingship. Accordingly, the legitimacy and exercise of the king's kingship are seen an inseparable from the establishment of statehood. Thus, the propaganda of the kingship of a contemporary king does not have to be in contradistinction to the royal administration of justice; and it is not an exaggeration that the prologue-epilogue frame provides royal authorship and authority for the rules included.

The importance of the code seems not only to lie in the king's own comment on the legitimacy and exercise of his kingship, but also in the social significance of the rules as the result of his invaluable administrative experience in his nearly forty-two-year reign. It is reasonable, therefore, that the king had urged the future kings and generations to uphold the social order embodied in the code and invite divine patronage of the systems he constituted for the empire. In this regard, more than the face value of royal propaganda, the corpus of the rules in fact reflects recognised principles established in and for royal administration, and they can be better interpreted in their social and judicial contexts.

3. The King's Role as a Legislator and Judge

The prologue-epilogue frame shows that the dispensation of justice as the major task of state administration was not restricted to court justice as it is in modern times. Instead, it was extended to every sphere of state administration, requiring the entire network of the governing system. Apparently, as in any society, social justice was regarded as the key for good and successful governance in Mesopotamia. The

[1] Ibid., 23. The importance of a prologue to the introduced laws was evidently recognised by Plato, who pointed out that the function of a prologue was to ensure a satisfactory acceptance of the prescriptions by the subject peoples addressed in the law code. For the citation and interpretation of Plato's remark, see Fögen, "The Legislator's Monologue," 1597-98.
[2] Postgate, *Early Mesopotamia*, 46, 273-74.

promise of establishing just and efficient governance to eradicate all that was wicked and evil from the empire may sound rather rhetorical; but the king's claim of diligently participating in this national enterprise has been confirmed by the recovered correspondence between him and his officers.

The prolific archaeological discoveries from Old Babylon appear particularly constructive for illuminating royal administration. The recovered correspondence between the king and his officials suggests that King Hammurrabi instituted an administrative network in the empire and took measures to improve his administrative superintendence at different levels. At the national level, royal personnel were recruited to deal with serious cases and to superintend local administration in precluding judicial corruption and deception. The title of 'judges of the king' appeared in some legal texts and in official seal inscriptions during the reign of Sabium. They came into prominence during the reign of Hammurabi and later in the reigns of Ammiditana and Ammişaduqa as well.[1] It seems that by assigning groups of judges to the major cities, the judicial functions exercised in the local temples were alternatively arrogated to the judges who played an increasingly prominent role in state administration. Modern scholars have thus characterised King Hammurabi's administration as secularisation or centralisation.[2]

The titles *rēdûm* (*rēdû šarrim*) and *ba'irum* frequently appear in the LH and other documents as military or police personnel carrying out specific royal missions.[3] Some of them were apparently appointed to execute royal edicts, acting with royal authority to settle serious cases. The title *rabianum* (LH 23, 24) refers to a governor who took responsibility for the crimes committed in his administrative territory and was obliged to prosecute robbers.[4] The king seems also to formulate regulations defining the missions of these officials in order to ensure administrative efficiency and preclude corruption (LH 26-39). The law also prescribes tough punishment for corrupt judges (LH 5).

The administrative bureaucracy in Old Babylon seemed to be highly organised. The numerous letters between King Hammurabi and his high-placed civil officers in the south demonstrate that the king in fact took final responsibility in all

[1] Rivkah Harris, "On the Process of Secularization under Hammurapi," *JCS* 15 (1961): 117-20.
[2] Joan Oates, *Babylon* (London: Thames & Hudson, 1986),70; Postgate, *Early Mesopotamia*, 277-300.
[3] For *Rēdûm* see L26, 27, 28, 30, 32, 34, 35, 36, 37, 38, 41; for *ba'irum* L26, 27, 28, 30, 32, 36, 37, 41 in Richardson, *Hammurabi's Laws*, 50, 52, 54, 56, 268.
[4] Mieroop, *The Ancient Mesopotamian City* (Oxford: Oxford University Press, 1997), 129-30.

matters no matter how insignificant they might be, and particularly dealt with land properties and the exploitation of rights of fields. Leemans has noted the different manner in which the king intervened:[1]

a. The king gave the final judgment as a superior judge; yet at the same time hinting that he interfered with a local court and handled the cases himself.[2]

b. The decision was partially made by the king and partially rendered by local judges whose conclusion was based upon facts and principles given by the king.

c. The king remitted the entire case to the local judges with a requirement for a report on the decision.

Thus, these letters confirm that the political declaration made in the code was not totally rhetorical, but reflects the king's own conclusive remarks on the exercise of his kingship. Admittedly, the king's diligent participation in state administration could have resulted in the establishment and improvement of a judicial system on the one hand, and in the enhancement of the quantity and function of written law on the other. The encouragement to seek relevant laws for just protection in the epilogue might have genuinely expressed the intention of the king for the codification.

In fact, King Hammurabi's participation in state administration was not unique in Mesopotamia. Greengus has noted that some other kings in Mesopotamia also appeared to deal with appeals in a similarly diligent manner. Examples of the king's action as a judge and legislator seem also to be recognised in some tablets ascribed to the kings of the Ur-III period and of the Larsa dynasty. [3] Some letters concerned with dealing with disputes are ascribed to the time of Samsuiluna, the successor of Hammurabi.[4] Later Neo-Assyrian legal documents similarly attest to such royal practices.[5] It can therefore be concluded that the phenomenon that the Mesopotamian ruler exercised judicial authority as a judge and legislator was common as a demonstration of the exercise of kingship.[6]

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[1] See Leemans, "King Hammurapi as Judge," 110-121.
[2] Also see S. E. Loewenstamm, *Comparative Studies in Biblical and Ancient Oriental Literatures* (AOAT 204; (Kevelaer: Butzon & Bercker; 1980), 23-26.
[3] S. Greengus, "Legal and Social Institutions of Ancient Mesopotamia," 473-74.
[4] Leemans, "King Hammurapi as Judge,"123-24.
[5] J. N. Postgate, *Fifty Neo-Assyrian Legal Documents* (Warminster: Aris & Philips, 1976); R. M. Jas, *Neo-Assyrian Judicial Procedure* (Ph.D. diss., Amsterdam: Vrije Universiteit, 1996).
[6] For royal exercise of justice in the Assyrian empire, see J. N. Postgate, "Royal Exercise of Justice under the Assyrian Empire," for the administration of justice in Neo-Babylon, see J. A. Brinkman, "The Early Neo-Babylonian Monarchy," both articles in *Le Palais et la Royauté: Archéologie et Civilisation* (ed. P. Garelli. Rencontre Assyriologique Internationale 19; Paris: P. Geuthner, 1974), 417-26, 409-15.

In this context of royal administration, making single laws or rules in the form of royal decrees and precedents would be an early characteristic of monarchical law; and codification would mark a significant legal development in the empire from a society mainly ruled by customary rules to a regulated system.

B. From Individual Rules to Codified Laws

The cuneiform codes themselves manifest the understanding of the definition of the codified laws, the sources and resources of the codification, and the legal position of the texts. To reconstruct a general process of the codification in ancient times, here we start with the definition of the codes.

1. The Designation of the LH

The LH defines the rules inscribed on the stele as the just decisions made by King Hammurabi (*dīnāt mīšarim ša Hammurabi šarrum*),[1] and as the embodiment of justice the king administered, "the words of justice which I inscribed on the stele" (*awāt mīšarim ša ina narîja ašṭuru*). As a concluding remark, the epilogue expounds the code as "traditions, the proper conduct, the judgments of the land that the king made" (*liqūlma kibsam rīdam dīn mātim ša adīnu purussē*).[2] The interpretation of the very definition of the code, *dīnāt mīšarim*, has been the key in scholarly debate on the nature and function of the text. The term *dīnāt*, a construct state of the plural form of *dīnūm*, is apparently open to a number of interpretations. According to a number of scholars, it can mean decision, verdict, judgment, and legal case, lawsuit, as well as claim, law, and article of law in a broad sense of ancient jurisdiction.[3] With *mīšarim*, the genitive form of *mīšarum*, justice, the incisive and crude meaning

[1] "These are the just decisions which Hammurabi, the able king, has established and thereby has directed the land along the course of truth and the correct way of life." cited from Roth, *Law Collection*, 133.
[2] Ibid., 135.
[3] M. T. Roth, "Mesopotamian Legal Traditions," 20; Richardson, *Hammurabi's Laws,* 166-67; and Zaccagnini, "Sacred and Human Components," 267.

of the term "decisions of justice" explicitly refers to the operation of the system of justice in general, and case decisions made in royal administration in particular.[1]

The parallel expressions of the phrase are represented by the names of the sun-god *Shamash*'s two sons, *kittum* and *mēšarum*, terms that frequently occur in prologues and epilogues in referring back to justice as "truth and right", and as "equity and justice".[2] Both terms imply that the function of the system of justice is to find out truth and to maintain fairness in the society. Accordingly, the term, *dīnāt mīšarim*, and its accompanying terms in the code are likely to manifest both concrete and abstract meanings of judicial judgement in state administration of justice. Whereas there is no technical term either in Sumerian or in Akkadian precisely corresponding to the modern term "law", nor were there terms for "jurisdiction" or an expression close to "by application of the law",[3] the phase *dīnāt mīšarim* in its textual and conceptual contexts appears to be the definition of law in the ancient Near East. For Mesopotamian legal experts, abstract meaning had to be expressed by concrete practice; and the practice of legal judgement represented by state administration of justice.

The correlation between concrete judicial judgement and abstract concept of justice appears to be shared in the HW wherein the paired terms משפט and צדקה refer respectively to distributive justice in particular and righteousness in general, corresponding to Akkadian *mīšarum* and *kittum*.[4] Thus, only in this conceptual and socio-political context, can the primary and ultimate function of ancient law be properly delineated.

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[1] Roth points out that the term covers a number of aspects of a law case, such as the verdicts rendered, penalty imposed by the king, judges, or courts, the divine oracles, a specific law in a text, abstract concept of legality or legally valid practice or behaviour, the entire process of lawsuit and even physical locality of court. See her "Mesopotamian Legal Traditions," 20.

[2] Roth, *Law Collections*, 81. For Hebrew meanings of judgement, see K. W. Whitelam, *The Just King: Monarchical Judicial Authority in Ancient Israel* (JSOTSup 12; Sheffield: Sheffield University Press, 1979), 51-59.

[3] Landsberger, "Die babylonischen Termini für Gesetz und Recht," 220.

[4] For etymological interpretation of *kittum* and *mīšarum*, see *CAD*, vol. K, 47, and vol. M, 117. For a discussion, see Shalom M. Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden: E. J. Brill, 1970), 5 and n. 5. For a further discussion of the terms in relation to the Hebrew concept of kingship, see Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: The Hebrew University, 1995), 7-9; and K. W. Whitelam *The Just King: Monarchical Judicial Authority in Ancient Israel* (JSOT Sup 12; Sheffield: Sheffield University Press, 1979), 29-37.

2. The Source of the Codification

The primary stage of the formulation certainly involves the process of compilation of authoritative resources. The epilogue reveals that the code inscribed on the stele consists of three major sources and resources: the traditions, the proper conduct, the judgements and verdicts of the land that the king rendered, "*ana awâtim ša ina narîja ašṭuru liqūlma kibsam rīdam dīn mātim ša adīnu purussē mātim*.[1] The interpretation of these terms would vary; however, according to the judicial context in ancient times, it is likely that the codification of the LH was involved in recognising well-established traditions, including both prevailing customary norms and royal precedents, and the royal decrees, *şimdatum, şimdat šarrim,* issued by these dynastic kings from their participation in royal administration.

a. Statute law

Both Westbrook and Jackson have recognised statute law and precedents as normative legal sources. Westbrook restricts statute law to the rules concerning administrative reform, price-fixing, standardising weights, currency, measures, and debt releases.[2] The scope of the statute law in his explanation, however, seems to be premised on subject matter, rather than on the nature, of the rules. According to modern definition, statute law is distinguished from case law by an Act of Parliament.[3] If one makes an analogy between modern and ancient statute law, only royal decree can be seen as equivalent to modern statute law. In this regard, the credibility of royal decrees is not characterised by the subject matter concerned, but by political authority which made the orders compulsory and legislative. Given that a monarchical king as a legislator could have issued any decree or instruction for whatever he was interested in, from macro-state reorganisation to individual case solution, the statute law in Old Babylon could have developed in line with any aspect of state reorganisation and could have covered different subject matter other than the statute law within Westbrook's narrow category. Thus, the inclusion of various rules in the code might have reflected the extension of state administration from national affairs to social life on the one hand, and the development of law from individual

[1] Roth, *Law Collections*, 135.
[2] Westbrook, "Cuneiform Law Codes and the Origins of Legislation," 216-17.
[3] E. A. Martin, ed., *A Dictionary of Law* (5th ed.; Oxford: Oxford University Press, 2003), 477.

royal decrees to codified law on the other. In this respect, Westbrook's understanding of statute law reflects modern categorisation of law which does not seem applicable to the ancient codes that equalise and authorise all rules included as state law without categorical differentiation. Correspondingly, the difference between royal decree and codified law is not the range of the topic, nor the original status of the rules, but the generality and persistence of two types of rule (see chapter 1.E.1).

While royal decrees as individual policies represented the king's specific interest in a particular aspect of state administration or a particular individual petition, they might be issued for different occasions and might be irrelevant to one another, and might not be effective after serving their initial purpose. Codified law, on the other hand, as a published state law-code, required a certain amount of coherence and consistency within the code, and even comprehensiveness at an advanced level; more important is its general applicability and consistency in the royal administration of justice across the vast empire. In view of this, all royal decrees can be taken as law in this ancient sense, but not all royal decrees would have been collected in a law-code. Only those decrees that would have been intended for a prolonged function of law had been reformulated in the code.

Moreover, the scarcity of restricted constitutional laws in the code as defined by Westbrook can be better interpreted in the light of the correlation between customary rules and written law in ancient administration of justice. Given that the development of law in ancient times was in close relation with the development of a legal system and with the maturity of legal thinking, written law in its initial state was not to replace, but either to reform or sophisticate the norm and system recognised by the empire. In this respect, Driver and Miles have rightly pointed out that the codes should be considered as a series of amendments to the customary rules of Babylon.[1] This may explain the fact that, while administrative and economic reforms did occur, and royal institutions did operate in the empire, the code is not concerned with the existing power structure which was well established by the king long before the codification of the law. It seems that the decrees or instructions issued for constituting the network of state administration–a parallel of modern constitutional and administrative laws–would no longer be effective when the network had been established and maintained by royal personnel. Accordingly, these

[1] Driver and Miles, *The Babylonian Laws*, vol.1, 41.

decrees were not selected in the code which appears to be concerned more with an improving aspect of state administration.

In this general trend, certain rules in the cuneiform codes would be concerned with particular constitutional and administrative matters. For instance, the rules emphasising the importance of legal evidence in legal prosecution, the rules clarifying the duties and privileges of royal personnel, and the rules regulating standards for normal hiring, borrowing, renting and commercial transactions might have their origins as royal edict that aimed at reorganising state systems and economic practices at times. However, as codified law, these rules are apparently sophisticated and elaborated for the systemisation of the legal system on the one hand and were intended to be continually enforced in state administration on the other. Because there was no need for these decrees regarding measures and currency standards to be reintroduced to the code since the system might have been well established, the code is thus concerned with practical matters possibly arising from actual state administration. Thus, as state law, the rules reformulated in the code reflect the development of law from individual decree to a sophisticated system, completing the established imperial system and recognised prevailing norms.

b. Precedent

Both Assyriologists and legal historians believe that some rules in the codes might be authoritative judicial verdicts made by the kings or royal judges and applied to the courts as leading examples prior to the codification (see chapter 2.A). Jas has particularly pointed out that systematically collecting verdicts made by supreme judges appeared not to be uncommon in Neo-Assyrian courts, and evidence hints that these authoritative verdicts had been consulted and sometimes quoted by local judges in a variant manner.[1] This means that these verdicts in effect functioned as case law in ancient courts.[2] In this trend, it was probable that certain leading precedents were reformulated in the code as universal rules in the empire.

However, the characteristic of ancient precedent appeared not to be the success and practicability of the rules in jurisdiction as in modern precedent: more important for the ancient precedent was the authority that bound the rules. Since ancient precedent made by a king himself would be equally as authoritative as any

[1] R. M. Jas, *Neo-Assyrian Judicial Procedures*, 181.
[2] Case Law is still effective in Britain and US even today as Common Law, which is based on judicial precedent rather than statutory laws. For the interpretation of Case Law and of Precedent, see Martin, *A Dictionary of Law* 67, 374.

royal decree or statute law, there was no distinction made between royal decree and precedent in the cuneiform codes. Moreover, case decisions appear as the crude definition of the code and the entire corpus of the rules is attributed to the authorship and authority of the king himself, so it is highly probable that certain rules in the code derived from authoritative case decisions, including those made by the judges appointed by the king. This, however, should not be taken to mean that the case decisions were collected in the code literally and considered as a mere collection of case decisions made by the king or his judges. As our analysis has already manifested, the code reflects sophisticated and elaborate aspects of original rules, and the original precedents had probably gone through the literary and legal process of reformulation to meet new criteria and demands of the codification.[1] Thus, while the original precedents had been reformulated to serve a general judicial purpose, the rules are uniformly associated with royal authority in the codes.

c. Civil Laws--the Contribution of Local Courts

The great interest in common life in relation to husbandry and agricultural society in the code (41-282), which has been excluded from the category of statute law in Westbrook's analysis, can be attributed either directly or indirectly to the local courts (see chapter 1.C.3). The codification of these civil laws suggests the increasing interplay between royal and local courts in the centralisation of state administration. The practice of state controlled administration could have automatically ruined local autonomy of the former city-states in Old Babylon, as it would have entailed the constitution of royal administration on different levels in the vast expanded empire. Although the local courts might still have enjoyed a certain degree of autonomy, the interplay between royal and local courts could have increased with the localisation of an imperial administrative network. The regular reports from royal judges who visited the local courts in circuit and the king's personal participation in jurisdiction could also have enhanced legal transparency and formalisation. This would probably have led to the codification of these "common laws" to meet the requirements of regulating the local court systems and resulted in the inclusion of these rules in the code.

The subject matter concerned in these rules is indeed a reflection of Mesopotamian pastoral and agricultural practices. Apparently, these rules reflected a

[1] See Roth's analysis, "The Law Collection of King Hammurabi," 14-16.

society that was mainly sustained by natural resources and familial ties; and regulating these common disputable matters would bring great efficiency and consistency in the local courts:

a) land tenure and irrigation (41-65);

b) loaning and borrowing (66-76);

c) trading, investment, and debt (77, 100- 119);

d) safe-keeping (120-126);

e) social relationships: honour, marriage, sexual relations, divorce, inheritance, dowry, adoption, domestic violence (127-195);

f) assault, treatment and accidents (196-233);

g) hiring and renting (233-277);

h) ownership of slaves (278-282).

The great number of the rules concerning common disputes suggests the extended function of written law in the empire in general, and state regulated individual's rights and interrelationship in particular. The code not only covers coercive sanctions for serious crimes, but also tends to define recognised value and conduct in society. These rules, which provided uniform solutions for social problems arising within the communities, would reform certain customary practices on the one hand, and introduce certain ethnic and ethical values as nation-wide practices on the other. Introducing new state policies and enhancing certain features of a culture as dominant practices could have become necessary for cultural, economic and political centralisation and unification of the empire. The code evidently manifests that the formulation of state law became more aware of, and concerned with, the reality of ordinary life, which suggests that royal administration of justice had gradually reached to the very bottom of society. The inclusion of the civil rules in the code manifests the process of royal review and verification of these reformulated rules. Accordingly, the codification itself had legal and political significance, signifying political control of social practices on the one hand, and the increasing legislative function and development of written law on the other hand. Thus, rather than a result of mere literary transmission of orally circulated customary rules, the cuneiform codes, as Lowenstamm points out, reflect common judicial

interests in Mesopotamian societies in general, and different norms recognised in each code in particular.[1]

3. The Purpose of the Codification

In spite of rich and wide resources for codifying a law-code in ancient times, the process could not be a mere assembling of rules from different sources, but would require both literary and judicial techniques concerning the coherence between individual rules and the position of the code in relation to those unwritten norms. Royal decrees and precedents might have already been in a written form prior to the codification; even so, they had to be reformulated for the sake of consistency and generality of law. The recognition of certain traditional norms that were probably applied orally in local courts would have involved deep familiarity with local courts and social life in the various regions and cultures within the empire.

Given that the LH was evidently composed at the end of the king's reign and rules are presented as the major contribution of royal administration of justice, the process of the codification might be long, and the text would have gone through certain stages of expansion and redaction as noted by a number of scholars. [2] In spite of this, the recognition of the rules associated with the contemporary king demonstrates that the ultimate purpose of composition was to maintain the royal systems established by King Hammurabi. As a state document, the purpose of the codification cannot be excluded from the general purpose of writing in ancient times: authorising and perpetuating the recognised text. The publication of the codified laws thus plainly served the purpose of maintaining the continuity of state-recognised policies and values. To reinforce the legislative status and function of the rules, the code was endowed with royal authorship and authority.

Roth has fairly defined three principal steps in the codification of a law-code, "(1) a *process* that results in (2) a written *authorised text*, backed by institutional power, that in turn (3) has an *impact* on juridical and administrative domains."[3] The progress through these essential stages would be both literary and political, whereby

[1] Lowenstamm, *Comparative Studies*, 39-47; 146-153.
[2] According to Roth, the discrepancies in some manuscripts can be attributed to the results of different traditions rather than different origins of the text. See her *Law Collections*, 73-76. Also see D. J. Wiseman, "The Laws of Hammurabi Again," *JSS* 7 (1962): 161-72; J. J. Finkelstein, "A Later Old Babylonian Copy of the Laws of Hammurabi," *JCS* 21 (1967): 39-48.
[3] Roth, "The Law Collection of King Hammurabi," 13.

royal sponsorship and authorisation of the text would be interlinked with the formulation of the code. In spite of variations in power structure in those empires in which the cuneiform codes were formulated, codification involved at least three major stages in relation to political authority. In the first stage, the text was drafted by a group of professionals or experts under royal supervision, selecting and compiling the rules from recognised legal sources. It had to be passed on to the highest authority of society at the second major stage to be reviewed, modified if necessary, before being verified. Once the text was verified and published by royal authority, the text became an enacted code, ready to be applied in state administration. In this form, declaring the authorship and authority of the code would be absolutely necessary for the effectiveness of the code. Apparently, the cuneiform codes exhibit such essential elements as a law-code authorised and promulgated by a contemporary emperor. Accordingly, the interpretation of the status and function of the corpus of the rules cannot be separated from its prologue-epilogue frame.

Summary

By exploring the concept and exercise of kingship in Mesopotamia, especially in the period of Old Babylon, concerned with King Hammurabi, we associate law-making and codification of the law particularly with the establishment of the associated new regimes. Our comparative analysis demonstrates that the increasing quantity and comprehensiveness of the rules in a late code, LH, can be linked with the changes made in social and political structure occurring in the empire. The transformation of the city-states into a centralised monarchic system in Old Babylon could have enhanced the position of written law in royal administration and led to the systematic codification of the law from different authoritative sources and resources. Thus, the process of codification could not have been a purely intellectual activity restricted to the literary sphere, nor could it have been done without good knowledge of court system and various social practices. In fact, the civil rules which comprised the large portion of the corpus of the rules were most likely to result from the interplay and cooperation between royal judges and local courts, aimed at regulating social practices among diverse peoples with a set of uniform law. The royal authorship and authorisation of the text thus further concludes the legislative status and prospective enforcement of the codified law.

C. The Position of Law in a Monarchical System

According to Cassese, philosophical understanding of law in modern times perceives two distinctive positions regarding the position of law in different power structures. One states that law could be regarded as a means of exercising social control that must however give way to superior power, e.g. a king or queen. This means that the ruler could disregard certain legal obligations without legal restraint. In contrast to this position, the other states that the law should be considered as paramount and as an asset to be appreciated for its legislative status. In this form, nobody could have been theoretically above the law, neither a king nor any figure in society. The differences between these two fundamental positions of law reflect a variety of law systems within different political entities.[1] Nonetheless, this debate, so vital to modern western legal thinking, seems to be non-existent in the cuneiform codes. We can only deduce a general position and function of monarchical law in an imperial context in which the codes were formulated.

1. The Position of Law in Relation to Kingship

Unlike the Hebrew codes which declare divine origin and their constitutional position in the Torah, the LH demonstrates that while the success of a king is ultimately due to divine favour, the act of making and promulgating the law is directly attributed to him and not to the verbal revelation of a god. Instead, cuneiform laws view deities more universally as patron gods as opposed to the more empirical portrait found in the HW.[2] The reference in the epilogue of the LL to "the word or utterance of the gods" is ambiguous, and can be understood as a figurative expression of the deity's will, rather than a divine utterance about the code.[3] In this

[1] Antonio Cassese, "The Concept of Law Upheld by Western, Socialist and Developing Countries," in *The Future of International Law in a Multicultural World: Workshop, The Hague, 17-19 November 1983* (ed. René-Jean; Hague; Boston and London: Martinus Nijhoff, 1984), 317-29.

[2] M. Greenberg made a distinction between the cuneiform and biblical laws as to the origin and authority of law. See his *Studies in the Bible and Jewish Thought* (JPSSDS; Philadelphia; Jerusalem: Jewish Publication Society, 1995), 27-30; Paul, on the other hand, blurs the distinction between them. See his *Studies in the Book of the Covenant*, 6-8.

[3] It is incorrect to say that the laws are presented in the LH as having divine rather than merely human origins. See Sparks: *Ancient texts*, 422.

regard, the more simplistic view that the code was the pronouncement of the king should be used as evidence that the king himself acted as a legislator and judge in establishing just governance. Correspondingly, the kings, who were entitled to make and update the laws, would not likely be bound entirely by the laws, even though the text claims that law should be exalted above future kings.

In this respect, Carlo Zaccagnini has correctly noted,

> The kings might seek oracular consultants for their activities, the specific office of lawgiver, dispenser of justice, etc. should not be considered as directly related to the 'priestly' royal function, nor should one conclude that the monarch operates in this sphere through channels of celestial 'revelation' or makes covenantal agreements with the deity. Rather, these functions are to be viewed as the personal achievements of a sovereign, acting in his capacity as wise, righteous, and generous ruler, albeit with the inspiration, advice, and command of the god(s).[1]

Generally speaking, a king or queen in an ancient monarchic system would be privileged to be the ultimate human authority, above anyone and any system created by them. The excessive concentration of power meant that a king or queen in the ancient East could have intervened in any systems and institutions whenever they intended and for whatever reason and to whatever extent. Given that an ancient system depended on human leaders rather than the system of law as in modern democratic systems, the establishment and maintenance of political power were largely premised on the capacity and integrity of individual kings and royal officers. In this regard, the decrees mainly functioned as a form of a king's present orders for royal administration and could have suppressed the laws formerly made either by the same king or a former dynastic king. In this monarchical context, an oriental king could easily have intervened in the regulated legal and administrative systems without considering his actions as undermining the authority of the enacted laws. Rather, he would have viewed it as a means of completing them.

Accordingly, as the unique leader of a totalitarian regime controlling all major national affairs, the king could be a law-giver and the administrator of the legal system. He could judge particular cases with or without reference to any rules set in the empire. His judgements, of which some were probably formulated and incorporated into the code afterwards, would be more forceful than the customary

[1] Carlo Zaccagnini, "Sacred and Human Components in Ancient near Eastern Law," *HR* 33 (1994): 267-274, 278, especially 269.

laws under which his people lived before the statutory law was promulgated.[1] He also had the power to supervise, adjust, and amend the laws in order to create an up-to-date law-code.[2] We find examples of this in King Hammurabi's dynamic position towards the legal system in state administration. Apparently, philosophical debate on the position of the law in modern times was not the concern of the cuneiform codes which were formulated to demonstrate the kings' absolute authority over the nations and their duties towards the gods. Admittedly, the position of law could not possibly have been above the king, even though the association of the code with royal authority would automatically endow the text with a legislative status.

Lafont considers the actual position and function of the ancient written law as subsidiary, in which the written law was not as superior as the current orders given by the same sovereign, and as secondarily authoritative in the administration of justice.[3] Such a monarchical position of law seems to have its counterpart in ancient China, where despite the promotion of rule by law in the Qin dynasty that had reached a peak in imperial China, it was never beyond the power of a king to countermand or bypass it.[4] The king's ultimate authority over the law seemed to be a combination of a double role of modern independent legislature and parliamentary power. Thus the authority of written law would have depended on the law-maker who was not legally bound to the letter of law. The status of law in Mesopotamia, phrased in terms of the philosophic debate discussed above, therefore, was more like the second conception of law as something to be upheld, yet also as something that must give way to a higher political authority that could do with it as it pleased.

2. The Function of Monarchical Law

Discussion of the actual function of the cuneiform codes in their contemporary societies is impossible since recovered legal data is rarely concerned with the relevance of rules in ancient court systems. It appears that while some rules

[1] Leemans has concluded, 'The king could give his judgements according to the customary law; in that case the 'law' has the character of a codification; but the king could also give his judgment according to his own insights of justice; then the 'law' has the character of a reform." See his "King Hammurapi as Judge," 108.
[2] Speiser, "Authority and Law in Mesopotamia," 12.
[3] S. Lafont, "Codification et Subsidiarité dans les Droits du Prôche-Orient Ancien," in *La Codification des Lois dans l'Antiquité: Actes du Colloque de Strasbourg 27-29 novembre 1997* (ed.Edmond Lévy; Paris: CRPOGA Strasbourg, 2000), 49-64.
[4] Liang, "Explicating 'law', 80-84.

are cited in the recovered report, some hint that different criteria were applied in the matters concerned in the report (see chapter 2.A).[1] The discussion of the function of law in an ancient monarchical system can only be general.

We should first note that legal response in ancient times was largely initiated by practical demands in the establishment of statehood and making law would be for dealing with state affairs. The codes were supposed to go with those existing customary rules which were neither abolished nor reformed by the codes. Accordingly, the primary function of ancient law was to either complement or suppress existing norms, reflected by limited subject coverage and incompleteness of rule within a category in a code. Further, we should be aware that a political power structure can decide not only the position of law, but also the quantity of law in the system in general.

In this regard, it is understandable that the Sumerian codes which were formulated for city-state administration exhibit much less completeness than those monarchical codes. It is not only because of being early codes in the ancient Near East, but also because the power structure of the city-state meant that each city enjoyed its own established culture more than those in a centralised political structure.[2] It is not surprising, therefore, that the standard prices established in the LU did not correspond to those recorded in contemporary commercial transactions. The prices regulated in the code might have been more favourable than those in actual transactions: it is not necessary, however, to interpret it as the totally utopian nature of the text,[3] for it could be a reflection of the discrepancies between royal policies and private transaction, or between good and bad years of produce. The question is thus the rigidity and scope of the law rather than the nature of the text.

The LH, on the other hand, appears much more sophisticated, which seems to meet the increasing demands of political and administrative centralisation, and legal

[1] An examination of earlier surviving documents shows that some provisions from Sumerian Laws and LH are quoted in contracts of the First Dynasty of Babylon, as well as some legal terms from law-codes. See C. H. W. Johns, *Babylonian and Assyrian Laws, Contracts and Letters* (Library of Birmingham, Ala.: Legal Classics Library, 1987), 43.

[2] For self-government as an important feature of the early Sumerian city-states, see T. Jacobsen, "Primitive Democracy in Ancient Mesopotamia," *JNES* 2 (1946): 159-72; and "Early Political Development in Mesopotamian Assemblies," *ZA* 52 (1957): 91-104. For a summary review and analysis of the interaction between public and private households in Mesopotamia, see Gregory C. Chirichigno, *Debt-Slavery in Israel and the Ancient Near East* (JSOTSup 141; Sheffield: Sheffield Academic Press, 1993), 31-49. For a detailed analysis of governing structure in the Mesopotamian cities, see Marc Van De Mieroop, *The Ancient Mesopotamian City*, 101-41.

[3] Zaccagnini, "Sacred and Human Components," 276-78.

development made in the rationalisation, contextualisation and articulation of legal thought. Even so, compared to modern law, the code appears far from thorough and complete. The evidence points out that the cuneiform codes were not intended to replace those unreformed customary rules, but rather to reform those customs that were incompatible with state reorganisation. This trend can be found in the silence on the part of the codes regarding the governing hierarchy in the code. The silence, however, cannot be understood as implying that such monarchical machinery and practice did not exist or were insignificant to society. Rather, it would imply permission granted at large.

This complementary function of ancient law is in effect reflected by certain rules in the LH. For instance, the first rule in the code appears solely concerned with the role of concrete evidence in the accusation of homicide. However, the rule, "if a man accuses another man and charges him with homicide but cannot bring proof against him, his accuser shall be killed" would go with a rule that states a principle that homicide is punished with a capital penalty. However, such a rule is not literarily presented in the entire code. The interpretation of the written rule thus has to be clarified in a social context in which those who commit homicide were customarily punished with the death penalty. Since the LH originated from Amorite culture, the prevailing Amorite practice of *talion* would serve as a most suitable context for the interpretation of the correlation between customary and codified rules. Thus the written rule as the opening rule of the code exhibits the particular intention of formalising the judicial system on the one hand and the general function of law on the other. This can be seen in its following four consecutive rules (2-5). While the first rule introduces the principle of the priority of evidence in prosecution, the four rules further elaborate the principle in various judicial circumstances. It seems, therefore, that the code either reforms or sophisticates certain aspects of traditional practices without literarily presenting those relevant norms. In the same manner, the code does not describe, yet hints at the established state administration network and social hierarchy. Apparently, these well established traditions and state machanisms did not need to be re-regulated in the code since the code would present something new in state administration. This tendency can also be seen in Athens, where while the written laws, as R. Thomas points out, were a mark of democracy, unwritten laws

were still considered as the fundamental laws of the gods and continued to be respected and had a role in Greek society as late as the end of the fifth century.[1]

While a legislative function of the code can be established, a number of scholars express their reservation about the immediate effect of the legislative function of the codes. Lafont doubts that the legislative function of the rules could have been applied automatically after the promulgation. Rather, she suggests that only via particular request could the rules have been applied in the courts and possibly some judges actively resisted the persistence of customary norms.[2] Such a trend would have occurred in local courts that were admittedly not under the close supervision of the Crown. Certainly, the majority of an illiterate population would not have had easy access to the published code; and even if they could, they would be unable to seek relevant rules for their cases without a scribal assistant, as in Athens.

Nevertheless, those high courts that were directly under royal supervision would have applied the laws in the court system following the publication of the codes. It would not have been a long and painful process to formalise a high court system on a national level. In this respect, we can find an analogous parallel in ancient Athens wherein the legal system appeared to be more advanced than its predecessor. Lanni has noted different manners towards the law within the court system established in Athens. While popular court jurors might reach a verdict on commonly shared norms rather than on precise legal rules, the procedures in homicide courts reveal that the system in fact encouraged the regular application of abstract rules of law in the high courts without regarding the broader social context of the disputes.[3] This may point out the phenomenon of different levels of law enforcement in ancient society.

Roth's reconstruction of a legal procedure for settling homicide in the New-Assyrian period also suggests how state authority could take the responsibility for the final settlement reached between two locally involved parties. While the parties which respectively represented the criminal and the victim negotiated the settlement locally, the governmental authority did not directly interfere with the process, but took an interest in the final settlement in order to guarantee that each party's rights

[1] Thomas, *Oral Tradition and Written Record in Classical Athens*, 32; idem, *Literacy and Orality in Ancient Greece*, 68.
[2] Lafont, "Codification et Subsidiarité dans les Droits du Prôche-Orient Ancien," 56.
[3] Lanni, *Law and Justice in the Courts of Classical Athens*, 15-114.

and duties were properly recognised. Thus, Roth has reached the conclusion that "although homicide in the NA system is largely a 'private' matter between the concerned parties, it is also a matter of 'public' concern to the state as a whole, and the public authority acts to control customary and traditionally private actions." [1] Apparently, Roth's reconstruction reflects the transition from locally executed justice to state regulated justice. While still allowing the locals to play their traditional roles in judicial negotiation, state authority gradually controlled customary practices. This early trend in court system may find its counterpart in the early western legal systems of medieval times, wherein the establishment of public courts did not end private justice, yet gradually absorbed it; and court justice depended on the initiative of the aggrieved party or family, while enforcing the court decision would depend on the community's desire to maintain peace and fairness.[2] Thus, with the establishment of royal administration and the formalisation of the legal system, the function of written law would have been enhanced in state administration and this would in turn have stimulated the development of written law in a monarchical system.

3. The Judge's Manner and Court Record

The limited function of the ancient law would consequently decide an ancient judge's manner and court system. In practice, the imperial system and the complementary relations between written law and customary rules would allow ancient judges to have manoeuvrable room and power in the interpretation and application of the rules in the courts. The forms of the rules could not have constrained ancient judges from contextualising relevant rules for discretionary judgement. Again, this trend might have varied from high courts to local courts. In rural courts, the laws might have mainly functioned as legal guidance when local judges dealt with various circumstances that might not have been covered in a published code. In royal courts, while the judges were likely to be legally bound by the letter of law, they would have had authority to make precedents for those cases that were involved in important social relations. While ancient legal systems were far

[1] M. T. Roth, "Homicide in the Neo-Assyrian Period," in *Language, Literature, and History: Philological and Historical Studies* (ed. Francesca Rochberg-Halton; New Haven, Connecticut: American Oriental Society, 1987), 351-365.
[2] K. F. Drew, "Public vs. Private Enforcement of the Law in the Early Middle Ages: Fifth to Twelve Centuries," *CKLR* 70 (1994-95): 1583-92.

from perfect,[1] it is understandable that the character and integrity of judges were particularly emphasised in ancient officialdom, and that the kings claim themselves as a just king, wise shepherd, and show their determination to punish the wrong-doers and their solicitude for the wellbeing of those disadvantaged groups.[2]

The function of ancient law and the manner of an ancient judge would correspondingly decide court practice at large. The argument for the non-legislative function of the codes on the premise of no court records of citing rules cannot be verified, since we cannot impose modern court practice on ancient courts. The absence of such records in ancient societies can be partly attributed to the simplicity of the writing system and the limitation of writing material. We should bear in our mind always that despite the widespread use of cuneiform writing in the second millennium, the fact remains that the majority of the population were still illiterate; the power of writing in the ancient world was almost entirely controlled by scribes under the supervision of state and religious institutions (see Introduction A.3).[3] Recovered contracts or records of transactions indicate that the language used in ancient times appears rather simple, only to serve the very practical purpose of recording a sale or loan as essential evidence.[4]

Moreover, the majority of recovered legal correspondence dealing with economic matters mainly reports the final results[5] rather than judicial reasoning or entire judicial procedures. In this regard, it could hardly have been possible prior to the development of a writing system that the ancient courts had developed an immediate recording system for referring to authoritative sources in the legal system while written law was formulated to complement customary rules. Serious cases may have been recorded now and then. There is no evidence that this was ever a regular part of judicial procedure, even in a high court. Any kind of attempt to keep records would probably be simple at best; and some records might have been destroyed after

[1] Westbrook has noted the differences between modern and ancient legal systems. See his *Studies in Biblical and Cuneiform Law*, 8.
[2] See the prologues of the LL, LH in Roth, *Law Collections*, 25, 77, 80. For the abuse of political and judicial power in the ancient Near East, see Westbrook, *Studies in Biblical and Cuneiform Law*, 9-38.
[3] Susan Pollock, *Ancient Mesopotamia* (Cambridge: Cambridge University Press, 1999),149-71.
[4] For a summative review of the function of ancient writing in relation to communal and state administration, see Schniedewind, *How the Bible Became a Book*, 35-47. For a general survey of ancient writing, see W. V. Harris, *Ancient Literacy* (Cambridge; Massachusetts: Harvard University Press, 1989), 25-27.
[5] Postgate, *Early Mesopotamia*, 51-70, 281-82.

serving their original purposes.[1] Legal reporting only became necessary when a king or royal judge intervened in local administrative affairs via regular visiting and correspondence.[2] The phenomenon of the cuneiform rules can also be seen in the early legal system established in Anglo-Norman England during the tenth century, wherein none of the courts from the King's court to the local manor courts maintained regular records of their hearings.[3]

Clearly, the recovered royal correspondence from Mesopotamia largely reflected specific situations or individual appeals that reached superior courts or the king himself. The complexity of the cases or the importance of the parties involved must have gone beyond the scope of the code and had to be dealt with directly by the representatives of the highest authority.[4] In these circumstances, royal judges could have made precedents. Thus, the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of judges could not have disappeared immediately with the formalisation of the legal system; and the luckily recovered document can only partially reflect of ancient legal systems. It would be reasonable, therefore, to suggest that, along with the constitution of state administration, the procedure in the high courts might have become formalistic and stricter through administrative centralisation, while the local courts might still have enjoyed a certain extent of autonomy. The particular question, therefore, should be concerned with the rigidity of law, rather than with the legislative position of ancient codes.

4. The Validity of the Monarchical Law

The LH shows that the king urges his successors to uphold the social orders that seem to derive from his very own experience of state administration and invites

[1] The general functions of recording in ancient times may find a parallel in Athens, see Thomas, *Oral Tradition and Written Record in Classical Athens,* 53-60, 82.
[2] Referring to the infrequency of the citation of omens in consultation, Westbrook actually points out that consulting legal reference for a trial by letter was very unusual in Mesopotamia. See his "Biblical and Cuneiform law codes," *RB* 92 (1985): 254-55; also see S. Parpola, *Letters from Assyrian Scholars to the Kings Esarhaddon and Assurbannipal* (AOAT2; Helsinki: Helsinki University Press,1983), xvii.
[3] H. G. Richardson and G. O. Sayles, *The Governance of Mediaeval England from the Conquest to Magna Carta* (Edinburgh, 1963), 185; J. Hudson, *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta* (London and New York: Longman, 1996), 25.
[4] Klima, "La Perspective Historique des Lois Hammourabiennes," 316.

the council of gods to patronise the just system he established for the empire.[1] The validity of ancient law therefore has to be interpreted in common legal culture reflected in the code and ethnic culture prevailing in oriental societies.

In the common oriental context that parents had power over their next generations, King Hammurabi, as the founder of empire and as the father to his royal descendents, expected his successors to maintain what he had achieved and bring his political ambitions to fruition. On the other hand, honouring the forefathers as the founders of the empire would have brought those new kings political support from the people and their fathers' powerful officers. In these cultural and political contexts, later hereditary kings would preserve and continue the enterprises instigated by their predecessors as a sign of loyalty and respect. In some cases the cuneiform codes may have even ascribed part of the kings' own achievements to their fathers. Sparks surmises that King Šulgi's attribution of the composition of the LU to his father was to honour his father and to lend authority to his own reform.[2] This was a phenomenon in the legal history of imperial China. While a new dynasty often meant the instigation of a new system, the validity of state policy and law were always in line with the ruling span of the dynasty, even though the extent of enforcement might have varied depending on the interest of individual hereditary kings. Thus, it would not be unsafe to say that ancient laws were generally considered valid until either being deliberately replaced by the same authority or automatically terminated with the collapse of the political regime that espoused them. Since Old Babylon was a hereditary dynasty, the validity of the LH presumably lasted until the end of the dynasty. Hammurabi's regime in fact was not broken up immediately on his death as scholars once believed, according to Kuhrt and Mieroop. Instead, it continued to be a fairly important political entity over a period of 150 years, especially in the area of Northern Babylonia, until the fatal raid made by the Hittite King, Mursili I, in 1595 BCE.[3] The continuity of the validity of the LH would be highly likely in this political context; and these promulgated laws could not politically have been abolished, but probably remained valid throughout the history of the dynasty.

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[1] Roth, *Law Collections*, 135.
[2] See Sparks, *Ancient Texts*, 420.
[3] Kuhrt, *The Ancient Near East*, vol. 1, 115-16; M. V. D. Mieroop, *A History of the Ancient Near East: ca. 3000-323* (Oxford: Blackwell, 2004), 108-09.

On the other hand, it would not be surprising if certain laws had become less enforced or no longer practised at some later point. For instance, ancient rulers in the second millennium often issued an *andurārum* or a *mīšarum* decree at the beginning of their reigns in order to promote the new king's reign by redressing economic and social imbalances. Later successors often re-enacted or ratified it on their own accession. However, some kings might not feel obliged to do so because of the immense financial burden.[1] In this regard, it is understandable that while Old Assyrian laws appear to be referred to in official verdicts and letters, the thousands of contracts and verdicts of the Old Babylonian period rarely cited LH verbatim.[2] This can be explained by the relatively late publication of the law-code in Hammurabi's regime on the one hand, and different legal cultures in different political regimes on the other.

It also appears that later new dynasties might have adopted certain former laws on the merit of the rules without acknowledging their origins.[3] The adoption of the laws made by other nations in fact has become increasingly common in modern times as collective intellectual property; good policies can be learned easily with increasing globalisation and legal interaction. Surely, certain prominent ancient laws might have had an influence far greater than their original purposes identified in the texts. In imperial China, despite political hostility between a former empire and a militarily established new regime, the policies made in the former empire were often studied by later regimes in order to make better laws and systems. In this trend, some former laws made by defeated kings might be adopted in the new regime with no reference made to their origins. In some cases a new regime might make relatively contrary policies if the former ones were considered as bad and responsible for their predecessor's decline and destruction. This trend can be glimpsed in Mesopotamia as well. The Kassites, according to Mieroop, who controlled the entirety of Babylonia from 1475 B.C.E, had no significant cultural impact on the conquered land, but respected Babylonian culture and honoured ancient Babylonian gods as their own.[4]

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[1] Kuhrt, *The Ancient Near East*, vol. 1, 77.
[2] K. R. Veenhof, "'In Accordance with the Words of the Stele': Evidence for Old Assyrian Legislation," *CKLR* 70 (1994-95): 1717-44.
[3] Liang, "Explicating 'law', 84-85.
[4] Mieroop, *A History of the Ancient Near East*, 163; also see J. A. Brinkman, "The Monarchy in the Time of the Kassite Dynasty," in *Le Palais et la Royauté: Archéologie et Civilisation* (ed. P. Garelli, RAI 19; Paris: P. Geuthner, 1974), 395-408.

In this form, the LH could indeed have a profound legacy in the ancient Near Eastern world. The LU, and numerous copies of the LH excavated from the ancient scribal centres and royal libraries, suggest that these codes had been used as a key part of scribal training either for the literary merit of the text, or for the legal values inherent in the texts, or the political importance of Old Babylon. The literary, legal and political significance of the LH seems evidently to be beyond its contemporary value. The standard concept of human kingship in relation to the concept of god and the administration of justice might have been an ideological model of political propaganda for any monarchical king and regime. Thus, the popularity of the text can be ascribed to all these distinctive elements inherent in the texts.

Conclusion

The above analysis of the correlation between the concept of kingship and the position of law in state administration manifests how the law could have developed and been codified. While the cuneiform codes faithfully reflect common concepts of human kingship in relation to the concept of gods and the exercise of kingship in society, codification seems genuinely to meet the ideological and administrative demands of a society that had probably experienced nation-wide reorganisation under an able king. Accordingly, the codified rules from different authoritative sources and resources would have been meant to function in socio-judicial systems as state law in spite of the fact that some laws were still second in importance to a king's new order, and the extent of law enforcement might have varied from local to high courts, depending on the king's interest in law.

As the most profound legal heritage in the ancient Near Eastern world, the cuneiform codes had formed their own literary style, ideological recognition and royal model of law publication in addition to their practical function in the administration of justice. Evidently, these codes comprise an indispensable part of legal history in the ancient Near East, and could provide a prototype both for the development of Greek law in Athens and of Hebrew law in Israel. The interpretation of the formation and development of Hebrew law in Israel therefore cannot be divorced from such conceptual, literary and legal heritages that could have passed on to Israel through various approaches in the course of history.

Chapter Four
The Codification of the Hebrew Law

Introduction

Law-codes were generally associated with the contemporary kings who promulgated them, and literature was either customarily anonymous or linked with famous figures of the past in the ancient Near East. [1] The Hebrew law-codes appear neither linked with any human king, nor with a famous figure from the past, but are associated with the national god of Israel, Yahweh. How we are to understand this attribution, in the context of the ancient conventions, is important to the discussion of the nature and function of Hebrew law in the Torah. It is also a correlative that while the position of law in a monarchical power structure would be considered to be under the power of the contemporary king, the Hebrew law-codes are enshrined as a constitution for establishing Israel as a priestly kingdom and a holy nation, וְאַתֶּם תִּהְיוּ־לִי מַמְלֶכֶת כֹּהֲנִים וְגוֹי קָדוֹשׁ (Exod 19:6). [2] The proclamation of such an unprecedented position for the law has long posed the scholarly question: were these

[1] Morton Smith has noted that Israelite literature was originally and customarily anonymous. Ascribing these anonymous works to a particular figure, however, became a fashion when interest in interpreting history as divine intervention became acute in the seventh and later centuries BCE, and further developed in the Israelite tradition during the neo-Babylonian and Persian periods. As a result, not a single text in the Hebrew literature is definitively ascribed to the actual institution responsible for its composition, but linked to some famous person of the past (e.g. Prov 1:1; 1 Kgs 3:28, 4:29-34). See his "Pseudepigraphy in the Israelite literary tradition," in *Pseudepigrapha I: Pseudopythagorica-Lettres de Platon-Littérature Pseudépigraphique juive* (FHEAC 17; Geneva: Vandoeuvres, 1972), 191-215; K. Koch, "Pseudonymous Writing," *IDB*, 812-14; J. A. Soggin, *Introduction to the Old Testament: From its Origins to the Closing of the Alexandrian Canon* (trans, John Bowden; London, third edn. 1989), 445-48, 462-68; and B. M. Levinson, "The Human Voice in Divine Revelation: The Problem of Authority in Biblical Law," in *Innovation in Religious Traditions: Essays in the Interpretation of Religious Change* (ed. M. A. Williams et al, RS 31; Berlin and New York: Mouton de Gruyter, 1992), 40-41.

[2] For the interpretation of the definition and variety of meanings, see Jo Bailey Wells, *God's Holy People: A Theme in Biblical Theology* (JSOTSup 305; Sheffield Academic Press, 2000), 47-57. For the difference between the concept of Yahweh's sovereign rule over Israel in the OT and the concept of the kingdom of God in Jesus' teaching, see D. Patrick, "The Kingdom of God in the Old Testament," in *The Kingdom of God in 20th-Century Interpretation* (ed. Wendell Willis; Peabody and Massachusetts: Hendrickson, 1987), 67-79.

In order to interpret the formation of the biblical codes properly, we shall investigate the historical development of Hebrew law in Israel on the one hand, and its connection with the presentation of the law-codes in the Torah on the other, thereby unravelling the purposes of the composition and redaction. Given that law-making was generally understood to be the responsibility of a human king in the ancient world, we shall first seek a logical socio-political context for the formulation of an early Hebrew code in monarchical Israel. In doing this, both the external exertion of legal and literary influence upon Israel, and internal legal development in relation to the establishment of the Israelites' own statehood will be considered and analysed. We shall then explore how Hebrew law could have developed into a constitutional position and been vested with divine authority in the Torah.

A. Contact between Mesopotamia and Palestine

Since the Hebrew codes appear to share common legal concepts in the ancient Near East and bear certain remarkable literary similarities to their cuneiform predecessors,[2] a direct cultural, political and legal contact between Mesopotamia and Palestine would have been indispensable both for the internal legal development and for the codification of the Hebrew law in Israelite societies.

Stephanie Dalley suggests that the long and various contacts between Mesopotamia and Palestine could have come (a) directly via the education of a literate elite, (b) via the deportation and administration of Israel and Judah by Assyrian and then Babylonian governors, (c) by hiring diviners, (d) indirectly through trade, via the common stock of west Semitic Amorites, and (e) filtered via

[1] B. M. Levinson, "The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah," *VT* 51(2001): 511-34.
[2] For an overall comparison, see Paul, *Studies in the Book of the Covenant*, 11-105; and D. P. Wright, "The Laws of Hammurabi as a Source for the Covenant Collection (Exodus 20:23-23:19)," *Maarav* 10 (2003), 11-87; Also see S. Greegus, "Filling Gaps: Laws found in Babylonia and in the Mishna but Absent in the Hebrew Bible," *Maarav* 7 (1991): 149-71.

the Hittite and Hurrian presence immediately to the North.[1] In view of all these elements, the decisive factors that could have led to the introduction of the cuneiform legal traditions to Israel would not have been an unofficial interaction between two cultures, but would be the direct contacts with those powerful empires which could transform Palestine politically and culturally. The most powerful influence exerted on Israelite societies has been narrowed down by a number of scholars to Assyrians and Babylonians. Apparently, early long and sustained contact should be counted for the Neo-Assyrians who evidently overpowered the two nations for centuries without immediately crashing them. Certain scholars, represented by Van Seters, have argued for Babylonian rather than Assyrian influence on the formation of the CC. This may point out Babylonian influence on the finalisation of the code when the exilic elite became more familiar with the cuneiform traditions while living under Babylonian rule, but by no means requires that the code was made as a brief version of the DL for the exiles.[2] Thus, the interaction with the Neo-Assyrian Empire is considered as the most logical context in current scholarship for the exertion of external influence on Israelite state administration and the formulation of an early Hebrew law-code.

Further, the recoveries of relatively abundant cuneiform documents in Canaan also suggest the existence of cuneiform scribal schools during the pre-Israelite periods.[3] The early literary and legal interaction between Mesopotamia and Palestine is thus placed by a number of scholars in the Middle and Late Bronze Age periods of

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[1] S. Dalley, "The Influence of Mesopotamia upon Israel and the Bible," in *The Legacy of Mesopotamia* (ed. S. Dalley; Oxford University Press, 1998), 57-64.

[2] B. M. Levinson, "Is the Covenant" an Exilic Composition? A Response to John Van Seters," in *In search of Pre-exilic Israel* (ed. J. Day; London: T & T Clark, 2004), 272-325; B. S. Jackson, "Revolution in Biblical Law: Some Reflections on the Role of Theory in Methodology," *JSS* 83 (2005): 83-115; Wright, D. P., Review of Van Seters, "A Law Book for the Diaspora," *JAOS* 124 (2004): 129-131.

[3] For the attestation of cuneiform documents in Aphek, Beth-Shean, Gezer, Hazor, Hebron, Jeicho, Megiddo, Shechem, and Taanach that leads some modern scholars to believe the existence of cuneiform scribal schools in Canaan, see W. W. Hallo and H. Tadmor, "A Lawsuit from Hazor," *IEJ* 27 (1977): 1-11; Wayne Horowitz and Aaron Shaffer, "An Administrative Tablet from Hazor: A Preliminary Edition," *IEJ* 42 (1992): 21-33; idem, "Additions and Corrections to 'An Administrative Tablet from Hazor: A Preliminary Edition'," *IEJ* 42 (1992): 167; idem, "A Fragment of a Letter from Hazor," *IEJ* 42 (1992): 165-66; Wayne Horowitz, "An Inscribed Lay Cylinder from Amarna Age Beth Shean," *IEJ* 46 (1996): 208-18; idem, "A Combined Multiplication Table in a Prism Fragment from Hazor," *IEJ* 47 (1997): 190-97; idem, "Two Late Bronze Age Tablets from Hazor," *IEJ* 50 (2000): 16-28; John Huehnergard and Wilfred van Soldt, "A Cuneiform Lexical Text from Ashkelon with a Canaanite Column," *IEJ* 49 (1999): 184-92. W. Horowitz and N. Wasserman, "An Old Babylonian Letter from Hazor with Mention of Mari and Ekallātum," *IEJ* 50 (2000): 169-74; W. Horowitz and Takayoshi Oshima, "Two More Cuneiform Finds from Hazor," *IEJ* 52 (2002): 179-86.

the second millennium.[1] However, there was an apparent break in this chained interaction between the late Bronze and Iron Age wherein no cuneiform document so far has been excavated. To piece the missing link, Rothenbusch has posited oral transmission for the continuing influence of the cuneiform legal traditions in Palestine.[2] He suggests that the essential political channel for the assimilation of the legal traditions should be placed at the time of King Ahaz, and the actual compilation of a Hebrew code should be seen as a fruitful outcome of Phoenician influence on Israelite culture.[3] Thus, in the absence of literary contact between two cultures, oral transmission is considered as the only possible way that the cuneiform legal traditions could have passed.

This interpretative model seems to echo the position held by those biblical scholars who believe an oral origin for all types of Hebrew literature.[4] However, the analogy made by E. W. Conrad between prophetic literature and legal texts has apparently overlooked the substantial difference between two types of text in terms of content, nature and social function (see chapter one D,2). As state law, the codes were meant to be published in written form in the first place. Although certain civil rules might have had their social origins as customary practices and were applied orally in informal judicial settlement, once being integrated in a law-code as nation-wide practices, they reflect reforming, sophisticated aspects of prevalent norms in written form (see chapter 2. B.2). Thus, the model of oral transmission may suit other Hebrew writings, such as wisdom literature, but not the law-codes that appeared in written form at the first place and being buttressed by contemporary political power. In this respect, Levinson has rightly pointed out that the oral transmission of legal tradition in Syria-Palestine may please those who cling to source criticism, but that it cannot stand up to scrutiny.[5]

Via intensive comparison between the CC and the LH, Wright has altogether eliminated those interpretative models, such as the independent development of Israel's own legal system, a shared cuneiform tradition via oral transmission and a

[1] For summary information, see Carr, *Writing on the Tablet of the Heart*, 47-61. For writing in Ugarit and early Israel, see Schniedewind, *How the Bible Became a Book*, 46-52.
[2] Ralf Rothenbusch, *Die kasuistische Rechtssammlung im 'Bundesbuch' (Ex 21,2-11.18-22,16) und ihr literarischer Kontext im Licht altorientalischer Parallelen* (AOAT 259; Münster: Ugarit-Verlag, 2000), 394-98, 481-513, 599-600.
[3] Ibid, 511-13, 600.
[4] E. W. Conrad, "Heard But Not Seen: the Representation of 'Books' in the Old Testament," *JSOT* 54 (1992): 45-59.
[5] Wright, "Hammurabi," 48-49.

mere textual transmission between the two types of texts. Instead, he suggests that the formulation of the CC must have resulted from direct literary and legal interaction between cuneiform and Hebrew cultures,[1] and places such contact roughly between 800 and pre-600 BCE, at the time when Israel and Judah respectively were under the suzerainty of the Neo-Assyrian Empire. The composition of the CC is thus seen as a reflection of both the assimilation of the cuneiform legal traditions and the growth of Israelite nationalism during that period. Four possible periods are correspondingly located therein: (a) in Judah under the pro-Assyrian King Ahaz (734-728), (b) in the North under the Assyrian policy of deportation round the fall of Samaria (722), (c) in Judah under the anti-Assyrian policy made by King Hezekiah (727-698), (d) in Judah under King Manasseh's pro-Assyrian policy. While each suggested period is evidently characterised by political contact with Assyrians, the culmination of foreign suzerainty and consequent rise of nationalism can only be allocated in Judah after the fall of the northern monarchy.

It is clear that the eighth century provided the most logical political, cultural, and economic contexts both for direct and intensive contact between the two cultures and for the internal economic and political advances made first in the North and then in the South. Politically, under the rule of the powerful king Tiglath-Pileser III (744-727), the Neo-Assyrian Empire had experienced enormous territorial expansion and the subsequent administrative incorporation and reorganisation of those conquered nations that became Assyrian provinces.[2] Evidence suggests that the rise of Assyria in the mid-eighth century, in effect, had changed its traditional feudal structure to a global and urbanised administration in order to implement a policy for systematic economic exploitation of those colonised states. In fact, the Assyrian imperial administration and the presence of Assyrian governors in these states are well attested by the wealth of material from the southern Levant.[3] This imperial policy, as Schniedewind points out, would have correspondingly had a profound impact on

[1] Ibid., 47-51.
[2] See Kuhrt, *The Ancient Near East*, vol. 2, 472, 493-97.
[3] M. Liverani points out that it was Tiglath-Pileser III who contained the fragmentation process of Assyrian military expansion and resumed a policy of inner consolidation and external expansion. See his *Israel's History and the History of Israel* (trans. Chiara Peri and Philip R. Davies; London and Oakville: Equinox, 2005), 143-47; trans. of *Oltre la Bibbia: Storia Antica di Israele* (Roma-Bari: Laterza and Figli Spa, Gius, 2003).

those devastated small states in their internal policy-making, trading models, administrative systems and even scribal skills.[1]

Moreover, the increasing complexity of the Neo-Assyrian Empire seemed to lead to the flourishing of writing and scribal arts in the ancient Near East at that time. The sharp rise of the number of archives and libraries in the major cities of the empire can be attributed to the efforts of these Neo-Assyrian kings, including the most famous library in Nineveh established by King Sennacherib (704-681). The political and cultural advance of the Assyrians surely provided an ideal environment for the legal interaction and the distribution of classical cuneiform writings within the empire as well as for learning the newly-introduced international language Aramaic and its corresponding scribal skills.[2] The number of copies of the LH recovered from this period, in effect, was the greatest from Middle Babylon down to the Neo-Babylonian period, almost the same as the number of copies found in Old Babylon: 19 versus 20 copies.[3] Other recovered inscriptions also suggest that Sargon II, in effect, used traditional terms and concepts for the propaganda of his own kingship: "in accordance with the name which the great gods have given me, to maintain righteousness and justice, to give guidance to the weak, not to injure the feeble, I paid back…"[4] His son, King Sennacherib, even boldly extolled himself with a unique role of "the king of justice".[5] Explicitly, these Assyrian kings could not have excluded themselves from the traditional concept of kingship as exhibited in the cuneiform codes, but could only use the tradition for the magnification of their own kingship. In this political and literary context, the acquisition of the Assyrian literary and administrative skills would have become available to the nations under Assyrian policies of globalisation and urbanisation. Correspondingly, the intense political,

[1] Schniedewind, *How the Bible Became a Book*, 93-98. For an analysis of Assyrian territory expansion and ideological development, see M. J. Geller, "Akkadian Sources of the Ninth Century" in *Understanding the History of Ancient Israel* (ed. H. G. W. Williamson, PBA 143; Oxford; New York: Oxford University Press, 2007), 229-41.

[2] J. Black and W. Tait, "Archives and Libraries in the Ancient Near East," *CANE* 4:2197-209; O. Pedersén, *Archives and Libraries in the Ancient Near East, 1500-300 B.C.* (Bethesda; MD: CDL Press, 1998), 158-64; L. Casson, *Libraries in the Ancient World* (New Haven: Yale University Press, 2001), 1-16; S. Parpola positively points out the widespread nature of literacy in the Assyrian empire and believes that elementary literacy was mandatory at least for public and state offices. See his "The Man without a Scribe and the Question of Literacy in the Assyrian Empire," 315-24; also see H. Vanstiphout, "Memory and Literacy in Ancient Western Asia," *CANE* 4: 2181-96.

[3] For a detailed analysis, see Wright, "Laws of Hammurabi," 52-53, 67-69. For an illustrated chart, see B. M. Levinson, "Is the Covenant an Exilic Composition?," 293.

[4] L. Kataja and R. Whiting, *Grants, Decrees and Gifts of the Neo-Assyrian Period* (SAA 12; Helsinki: Helsinki University Press, 1995), 20, 24-25, 27.

[5] Hayim Tadmor has interpreted the self-boasted title as a sign of deliberately departing from Sargon's policies. See his "Sennacherib, King of Justice," 385-90.

administrative and economic interaction between the Neo-Assyrian empire and Israelite monarchies cannot exclude two vital elements: the instigation of the imperial global policy from the time of Tiglath-Pileser III (744-) [1] and the corresponding pro-Assyrian policy made within Israelite monarchies.

Apparently, the pro-Assyrian policy would have had its first test in the northern monarchy in the reign of Jeroboam II (782-747) and later in the southern monarchy under the authority of King Ahaz (734-728). Legal interaction between the two cultures could have been significantly enhanced under the policy. While no evidence suggests that the empire had its religious system systematically imposed on those small conquered nations (see chapter 5.D.1), [2] administrative interaction between them would have become inevitable and indispensable to the implementation of imperial policies. Those pro-Assyrian nations would have been willing to learn the high culture and to show their voluntary subordination to their political and cultural superior. The DtrH, in effect, indicates how the Judean king Ahaz borrowed a foreign model of the altar in Damascus because of the Assyrian king Tiglath-Pileser, and made a new one in place of the old altar and formerly established rituals in Jerusalem temple (2 Kgs 16:10-18). Smelik suggests that ordering a new altar by King Ahaz seemed to parade his political allegiance to the foreign king, rather than to make a religious innovation replacing Yahweh's position with any other deity.[3]

Admittedly, when the Assyrians established their own administrative centre in Samaria after the destruction of the northern monarchy, the empire could have exerted its power more frequently and directly in Palestine.[4] The reorganisation of those defeated nations could have initiated the introduction of certain old and new

[1] Wright also suggests that the contact would have allowed the monarchical elite to be educated in Assyrian culture, rather than in Judean monarchy. See his "Laws of Hammurabi," 51-52, 58-67.
[2] For a summary of the Neo-Assyrian religious policy, see S. W. Holloway, "Harran: Cultic Geography in the New-Assyrian Empire and its Implications for Sennacherib's 'Letter to Hezekiah' in 2 Kings" in *The Pitcher is Broken: Memorial Essays for Gösta W. Ahlström* (ed. S. W. Holloway and L. K. Handy, JSOTSup 190; Sheffield: Sheffield Academic Press, 1995), 276-308.
[3] K. A. D. Smelik has made analogy between the religious innovation made by Jeroboam I and Ahaz in the DtrH and reached the conclusion that both were motivated by political rather than religious interest. See his "The New Altar of King Ahaz (2 Kings 16): Deuteronomistic Re-Interpretation of a Cult Reform," in *Deuteronomy and Deuteronomistic Literature* (ed. M. Vervenne and J. Lust, BETL 133; Leuven: University Press, 1997), 263-78.
[4] N. Na'aman has noted the appointment of Assyrian officials in vassal kingdoms. See "The Brook of Egypt and Assyrian Policy on the Border of Egypt," *TA* 6 (1979): 68-90.

laws to those nations whose populations had been crossly deported by the empire.[1] Correspondingly, the formation of an early Hebrew code could have reflected the demands of the increasing importance of written law in state re-organisation and the particular adjustment of Israel's own system to the Assyrian system in line with imperial globalisation. While the cuneiform legal and literary traditions exerted no apparent influence on Egypt and Ugarit where no law-code or anything of the kind has been recovered in spite of the circulation of cuneiform writing in these regions (see chapter 5.A.2), Israelite and Judean monarchies must have had their own legal structure that could have accommodated and assimilated the foreign traditions. Thus, it is important to investigate the internal legal development in Israel in order to better understand the formation of the Hebrew codes.

B. Internal Legal Development in Israel

Since the Torah attributes all Hebrew laws to divine discourse back to the time of Moses, it would be logically impossible to associate the codification of any Hebrew code with any monarchical king as the cuneiform codes. The investigation of the internal legal development, therefore, can only look at the establishment of Israelite statehood in general and social development in particular.

According to the DtrH, royal administration seems to be well established in David-Solomonic times. However, no sufficient evidence suggests the establishment of Israelite statehood on such a scale in the tenth century BCE. Archaeological reconstruction of the city of Jerusalem in fact suggests that the Jerusalem was no more than a common village during the tenth century, and the regime of David (1000-961) and Solomon (961-931) no more than a chiefdom of small highland penetrating into the Judean hills.[2] Thus, in a small and tradition-based monarchy, it

[1] For the analysis of the Assyrian deportation, see B. Oded, *Mass Deportations and Deportees in the Neo-Assyrian Empire (*Wiesbaden: Reichert, 1979), 1-115; and G. N. Knoppers, "In Search of Post-Exilic Israel: Samaria after the Fall of the Northern Kingdom," in *In Search of Pre-Exilic Israel: Proceedings of the Oxford Old Testament Seminar* (ed. J. Day; London: T&T Clark, 2004), 150-80.

[2] For a wide-ranged discussion on this issue, see the articles in L. K. Handy, ed., *The Age of Solomon: Scholarship at the Turn of the Millennium* (Leiden; New York and Köln: Brill, 1997), and in A. G. Vaughn and A. E. Killebrew, eds. *Jerusalem in Bible and Archaeology: The First Temple Period* (Atlanta: Society of Biblical Literature, 2003). For a transition between local leadership of a tribal society to the foundation of two neighbouring monarchies, see N. Na'aman, "The Northern Kingdom

would be unlikely that a significant law-code could have been formulated for nation-wide practices. Further, since the replacing of traditional pre-monarchical practices with a monarchical system is generally understood as a gradual process in the anthropological reconstruction of a traditional society, the judicial structure reflected in Jehosaphat's reform would have been an increasing centralisation of royal administration rather than as an instant legal development in Judean society.[1] In this regard, the intensive judicial reform conducted by King Jehosaphat (871-848) in DtrH may serve as a clue to the establishment of royal administration in Judean society (1 Kgs 22:41-51; 2 Chr 17:1-21:1), this does not guarantee a codification of law under the regime.

Further, we should be aware that while the shape of a legal system within a culture could have gone through a long process of evolution, the codification of a particular code represents the culmination of, rather than the initial stage of, legal development within the system. In this regard, formulating a law-code may reflect the intention of officially enforcing those legal practices established over generations and those new laws. In this form, codification of a law-code as a concomitance of large-scale state reorganisation could have taken place in the northern monarchy at the time when it gradually reached its peak. The DtrH indicates that a radical reorganisation was already undertaken by the first king Jeroboam I (930-910) immediately following the political split from the Davidic dynasty (1 Kgs 12:25-33). The newly-established monarchy would have been engaged in various aspects of state reorganisation, including reorganising the governing and religious system. Codifying a set of royal orders would have been necessary and essential in the formation of the new statehood.

It is also possible that the power conflicts in the late northern monarchy would have also stimulated the development of law under those powerful kings. With

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in the Late Tenth-Ninth Centuries BCE," and Albertz, "Social history of Ancient Israel," both articles in *Understanding the History of Ancient Israel* (ed. H. G. W. Williamson, PBA 143; Oxford; New York: Oxford University Press, 2007), 399-418, 355-59.

[1] For a detailed analysis and reconstruction of the judicial system at that time, see B. S. Jackson, "Law in the 9th century: The Jehoshaphat Tradition in Context," in *Understanding the History of Ancient Israel* (ed. H. G. W. Williamson; Oxford; New York: Oxford University Press, 2007), 369-97. For an ideologically oriented composition, see G. N. Knoppers, "Jehoshaphat's Judiciary and the Scroll of YHWH's Torah," *JBL* 113 (1994): 59-80. For the development of the text against different backgrounds, see R. W. Klein, "Reflections on Historiography in the Account of Jehoshaphat," in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom* (Winona Lake, Indiana: Eisenbrauns, 1995), 643-658. For a summary, see R. H. Lowery, *The Reforming Kings: Cultic and Society in First Temple Judah* (JSOTSup 120; Sheffield: Sheffield Academic Press, 1991), 103-04.

the establishment of Samaria as the administrative centre and as the fortified capital of the monarchy (1 Kgs 16:15-28), the reign of King Omri (885-874), in effect, marked a decisive change in the political, institutional and economic development of the northern monarchy.[1] King Ahab (873-853), whose Phoenician queen brought Phoenician religion and trade into the monarchy, could also have created social changes and political division between different social groups (see chapter 5.C). In addition to these, the reign of King Jeroboam II (782-747) can also be seen as a significant stage of the development of northern statehood, wherein the monarchy was brought to its peak of economic prosperity, territorial expansion and diplomatic dominance in the early eighth century BCE.[2] The increasing social disparity and division by the end of the monarchy, as partly reflected in Amos' critique,[3] might have stimulated the codification of a Hebrew law-code which could authorise different standards to be used to deal with different social classes involved in common disputes as the LH reflecting social development of Old Babylon. Finally, the fall of Samaria might have directly triggered the introduction and preservation of a northern legal heritage in the Judean monarchy just as the Judean elite did after the disastrous Exile.

Certain scholars have noted the probability of the exertion of northern influence on the religion and politics of Judean monarchy in connection with cultic reform by King Hezekiah (728-698) and with the law book recovered from the temple at Jerusalem.[4] In spite of all those possibilities, the final locus of the codification of the Hebrew law should be located in Judean society, especially after the northern monarchy was politically destroyed in 722 BCE.

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[1] Liverani, *Israel's History and the History of Israel*, 107-09. For an archaeological reconstruction and interpretation of the major cities, Samaria, Jezreel and Meggiddo, in the ninth century BCE, see David Ussishkin, "Jezreel, Samaria and Megiddo: Royal Centres of Omri and Ahab," in *Congress Volume: Cambridge 1995* (ed. J. A. Emerton; Leiden: Brill, 1997), 351-64; and I. Finkelstein and N. Na'aman, "Shechem of the Amarna Period and the Rise of the Northern Kingdom of Israel," *IEJ* 55 (2005): 182-87.

[2] I. Finkelstein and N. A. Silberman, "Temple and Dynasty: Hezekiah, the Remaking of Judah and the Rise of the Pan-Israelite Ideology," *JSOT* 30 (2006): 261-62.

[3] For the interpretation of the prophetic critique in relation to the social problems at the end of northern monarchy, see B. Lang, *Monotheism and the Prophetic Minority*: *An Essay in Biblical History and Sociology* (Sheffield: Almond press, 1983), 114-27.

[4] For the discussion, see H. H. Rowley, *From Moses to Qumran: Studies in the Old Testament* (New York: Association Press, 1963), 187-208; E. W. Nicholson, "The Centralisation of the Cult in Deuteronomy," *VT* 13 (1963): 380-89; idem, *Deuteronomy and Tradition* (Oxford: Basil Blackwell, 1967), 58-82.

C. Judean Locus of the Formation

Finkelstein and Silberman have categorised three phases for the development of Judean statehood via the archaeological reconstruction of the city of Jerusalem and of other remarkable sites in Palestine.[1] The first phase is located in the Iron Age I from the mid-twelfth to late tenth centuries, wherein the capital city Jerusalem of the so-called United Monarchy in the DtrH appears as a small highland village in the reconstruction.[2] The great leap of the Judean economy is thus believed to take off from the late Iron Age IIA, featured by the earliest fortification systems at several sites and other significant public building activities.[3] The transition from the second to the third phase is understood to take place in a very short period in the second half of the eighth century BCE, attributed both to the incorporation of the state into the Assyrian global economy[4] and the integration of a substantial number of the northern population into the state after the fall of Samaria in 722-720 BCE.[5] The socio-economic character of the southern monarchy is thus believed to be utterly revolutionised within several decades between 732 (but mainly 722) and 700 BCE (or a few years later). Jerusalem grew to be the largest city in the entire country, from an area originally covering no more than c. 2 hectares to one of c. 60 hectares, with an estimated population of up to 10–12,000 inhabitants, protected by a system of massive fortifications surrounding the city, and benefited from a water supply system. [6] The growth of Jerusalem could have subsequently developed into its

[1] See their "Temple and Dynasty," 259-60.
[2] David Ussishkin, "Solomon's Jerusalem: The Text and the Facts on the Ground," and Gunnar Lehmann, "The United Monarchy in the Countryside: Jerusalem, Judah, and the Shephelah during the Tenth Century B.C.E.," in *Jerusalem in Bible and Archaeology*, 103-16, 117-62. For the idealised composition of the United Monarchy, see Schniedewind, *How the Bible Became a Book*, 74.
[3] I. Finkelstein, "The Rise of Jerusalem and Judah: The Missing Link," *Levant* 33 (2001): 105-15.
[4] I. Finkelstein "Horvat Qiṭmīt and the Southern Trade in the Late Iron Age II," *ZDPV* 108 (1992): 156-70; L. Singer-Avitz, "Beersheba—A Gateway Community in Southern Arabian Long-Distance Trade in the Eighth Century B.C.E.," *TA* 26 (1999): 3-74; N. Na'aman, "An Assyrian Residence at Ramat Rahel?," *TA* 28 (2001): 260-80.
[5] M. Broshi, "The Expansion of Jerusalem in the Reigns of Hezekiah and Manasseh," *IEJ* 24 (1974): 21-26.
[6] The size of Jerusalem city at that time remains controversial in modern scholarship, and the estimation of 60 hectares by Finkelstein represents a rather minimal one. For the critics of the revisionists, or minimalists, see E. Nicholson, "Current 'Revisionism' and the Literature of the Old Testament," and W. G. Dever, "Histories and Non-Histories of Ancient Israel: The Question of the United Monarchy," in *In Search of Pre-Exilic Israel* (ed. J. Day), 1-22; 65-94. For a relative positive view, see L. L. Grabbe, "Some Recent Issues in the Study of the History of Israel," in *Understanding*

surrounding areas by necessitating residential villages both for the supply of agricultural produce and for easing its overcrowding. Thus Judah had been transformed from a rural state to "an advanced bureaucratic apparatus, a fully developed settlement hierarchy, monumental building activities and mass production of secondary agricultural products" in the late eighth century.[1]

In such a climate, the mixture and expansion of the population and its subsequent administrative demands could have entailed the introduction of established Judean orders to the new population who settled in Jerusalem and its surrounding areas on the one hand, and the incorporation of the northern legal heritage into the Judean legal system on the other. Apart from this, certain new laws might have been made, particularly to protect the northern immigrants along with vulnerable Judeans, for stabilising and unifying the mixed and over-expanded communities.

The humanitarian laws in the *mishpatim* concerning the Hebrew slavery, well-being of aliens, orphans, widows and the poor might mirror the social, political and economic status of these newcomers on the one hand, and political measures taken in Judah on the other. In order to respond to social needs at the time of economic and demographic surge following the fall of the northern monarchy, those resident aliens, widows and orphans were included in the category of social care. Certain rules in the CC (22:25-23:8) which were apparently made to redress economic imbalance and moral degradation might have also reflected certain political measures taken to reform society, such as the existing monetary lending system and slavery system. The introduction of these measures could have meant that the formulation of state law was not simply to avert a similar destruction falling on the southern monarchy, but was also aimed at creating a prosperous and righteous

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the History of Ancient Israel (ed. H. G. W. Williamson. PBA 143; Oxford; New York: Oxford University Press, 2007), 57-67. For the reconstruction of Jerusalem city, also see N. Avigad, *Discovering Jerusalem* (Nashville: Thomas Nelson, 1983), 54-60; R. Reich and E. Shukron, "The Urban Development of Jerusalem in the Late Eighth Century B.C.E.," and H. Geva, "Western Jerusalem at the End of the First Temple Period in Light of the Excavations in the Jewish Quarter," in *Jerusalem in Bible and Archaeology*, 209-18, 183-203.

[1] I. Finkelstein, "State Formation in Israel and Judah: A Contrast in Context, A Contrast in Trajectory," *NEA* 62 (1999): 35-52. For additional information for civil and administrative buildup in King Hezekiah's reign, see A. G. Vaughn, *Theology, History, and Archaeology in the Chronicler's Account of Hezekiah* (Atlanta, Georgia: Scholar Press, 1999), 19-167.

community via improving the legal system and via integrating the marginalised groups into the monarchy with social care.[1]

Accordingly, the codification of a Hebrew code can be placed in these socio-political contexts. In the absence of a direct link between the codes and the monarchy, we have to come to the analysis of the codification of the Hebrew law in the Torah in relation to logic socio-political contexts of the formation.

D. The Codification of the CL (Exod 20:1-23.33)

The first piece of legislation given in the Sinai setting is apparently divided into three units by a superscription and an interpretative narrative: the Ten Commandments, the altar laws and the *mishpatim*. This original division seems to be reasserted by the different manner of the promulgation[2] and the subject matter concerned in each unit. Such deliberate differentiation seems to imply not only a different priority of these rules in the present form of the Torah, but also different stages of the compilation in historical reading.

1. The *mishpatim* (21:1-23:19)

The origin of the *mishpatim* has been generally recognised in modern scholarship as an early Hebrew code formulated in Israelite society. Comparison made with the cuneiform codes manifests its striking resemblance to the cuneiform legal traditions in terms of subject matter, literary form and the social function inherent in the rules. The casuistic rules that distinguish the *mishpatim* have been recognised as an internally homogeneous, self-contained legal corpus by a number of legal scholars (see chapter 1.B and C).

Certain rules indicate the trend of institutionalisation and normalisation of

[1] Although the social role of Amos' critique might have been ideological, rather than pragmatic, as Huffmon argues, the adoption of the message in the HW apparently reflects Judean understanding of the fall of Samaria in order to serve as a dire warning to the southern monarchy. See H. B. Huffmon, "The Social Role of Amos' Message" in *The Quest for the Kingdom of God: Studies in Honor of George E. Mendenhall* (ed. H. B. Huffmon et al; Winona Lake, Indiana: Eisenbrauns, 1983), 109-26.

[2] For a philosophical interpretation of different types of divine discourse in the Bible, see Nicholas Wolterstorff, *Divine Discourse: Philosophical Reflection on the Claim that God Speaks* (Cambridge: Cambridge University Press, 1995), especially 19-57.

judicial system in the society. The laws requiring due respect to authority (22:28), judicial honesty, and imposing obligations upon the individuals of the community (23:1-8) were evidently to improve the established legal system, addressing both the judges and the communities as a whole. The death penalties for serious crimes can be seen as exerting state power via the judicial system (21:12-17). The distinction made between manslaughter and murder (21:12-14), between self-defence and deliberate injury (22:1-3) exhibits the development of legal concepts applied in the judicial system. The various types of violence and injury occurring between different social classes (21:18-27) and between animals and humans (21:28-35) are differentiated. The crime of stealing (22:1), the damage made to private property (22:1-15) and various physical injuries caused by violence (22:16-17) are categorised with meted sanctions in accord with Hebrew values. Either general principles (21:18, 23-25; 22:5, 6) or specific sanctions are prescribed in these exemplary circumstances (21:12-22:16). The explicit excessive fines prescribed in the rules (21:19, 20, 22, 29, 32; 22:1, 7, 9), rather than mere restitution, indeed exhibit the imposition of state authority in the judicial realm (see chapter 2. C.3).

The trend of judicial rationalisation and practicality can also be seen in the *mishpatim*. An altar is no longer considered as a haven that could have warded off the legal consequences to a punishable criminal (21:14). Further, the principle of *lex talionis* appears to be the foundation of the criminal laws in the *mishpatim*, it is however further sophisticated in actual social circumstances by the consideration of differences in the social classes of those involved, different types of fighting, and the varying consequences of the incident (21:18-27). The differentiation and sophistication of the principle of the *talion* and other offences in the *mishpatim* manifests the increasing social differentiation with the establishment of a bureaucratic and hierarchic social system on the one hand, and the interaction between the mutualisation of legal thinking and institutionalisation of the legal system on the other (see chapter 2.B.4). It seems that while the courts might have still been operated generally with discretion, the power of individual judges could have been restricted more or less by the established rules (21:12-25). Thus, these rules cannot be considered as a collection of customary rules as in the non-legislative interpretations, but to be state law, either curbed or developed within certain prevalent norms in order to meet socio-political demands of an increasingly institutionalised society.

Apparently, certain rules in the *mishpatim* indicate the purpose of reforming specific social practices. The slavery system, regulated for both males (21:2-6) and females (21:7-11), probably had its origin as state policy when native people went into slavery because of poverty and debt gradually became a social phenomenon (21:11). The purpose of regulating the system was for social stability and solidarity. Its codification is an indication of continual conformity of the decree in society. The death penalty prescribed for violent behaviour towards parents (21:15, 17), on the other hand, seems to promote the norm of respecting senior members in the household. In these cases, the rules were either to reform existing social practice via political enforcement or to promote certain existing norms via legalisation. Thus, the *mishpatim* can reflect the sophistication of a developing society in general and legal development in particular.

The codification of the *mishpatim*, according to general legal development in a monarchic system, might have experienced three major stages in relation to the development of Israelite statehood: first, the formulation of the origins of the criminal and civil rules (21:12-22:3; 21:12-22:3) as the exertion of state power over customary practices, including those rules sophisticating the well-known practice of *talion* in accord with increasing social complexity. In the second stage came laws concerning judicial honesty and fairness (23:1-8) and those of slavery (21:2-11). These stages reflect the formalisation and rationalisation of the judicial system on the one hand, and increasing social differentiation and inequality on the other. The humanitarian laws (22:21-27, 23:9-12) can be seen as a late development in conjunction with some particular national misfortune, such as a natural disaster, war, or individual misfortunes. They might have their origins as communal obligations in a kin-based community (see chapter 6.D.1); however, as state law, these rules reflect official reformulation of social care. This could have taken place in Judean monarchy after 722 BCE, mirroring the monarchy's attitude towards northern refugees. Finally, the *mishpatim* might have also experienced final redaction in accord with the new framework in the Torah. This might have been reflected in the laws for the observation of national festivals (23:9-19), which might have had their origins in monarchic times, yet were reformulated with the combination of humane, historical and religious elements in the new framework. Certain random rules in the codes which cannot be identified with any particular topic may be explained as an appendix (22:28-31, 23:18-19), in the manner of ancient organisation for additional rules as

suggested by Rofé.[1]

Each stage might have had its own origins both in the northern and southern monarchy, yet then been taken further in the southern context. Thus, the formation of the *mishpatim* in the context of the establishment of Judean statehood cannot be taken as an exclusive development within a single culture, but would be probably associated with administrative and literary contact with the Neo-Assyrian Empire on the one hand, and with the assimilation of northern legal heritage and state reorganisation in Judean monarchy on the other. Its inclusion in the Sinai discourse suggests that the social system perceived in the Torah is not a mere conceptual or religious one, but also embraces monarchical legal and political heritage.

2. The Altar Laws (20:22-26)

The altar laws in the CL are considered in critical scholarship as the key to theologically distinguishing two major stages of Israelite religion and are generally interpreted in the historical reading as a description of multi-altar cults in Israel prior to the watershed marked by cultic centralisation in King Josiah's reform.[2] Recently, Paul Heger has noted the difference between the three altar laws in the Torah (Exod 20:21-23; 27:1-8; Deut 31:26) and suggests that the different laws reflect the development of the cultic system in different political and economic backgrounds. The altar model regulated in the CC is thus placed in a nomadic society wherein worshippers would appear wherever it might be. The centralised cult in the Deuteronomy however reflects a settled community that needs a regular and organised cult.[3] This suggestion, however, needs to be re-examined along with the development made in the interpretation of the formation of Israelite religion.

Apparently, the first part of the altar law in the CC stresses the principle of the exclusiveness of Yahweh (Exod 20:22-23). The second part applies the principle to the construction of a cultic altar, which permits building an altar anywhere as the

[1] For A. Rofé's summary on the logical links of laws in Deuteronomy, see *Deuteronomy: Issues and Interpretation* (London: T & T Clark, 2002), 55-77; and D. P. Wright, "The Fallacies of Chiasmus: A Critique of Structures Proposed for the Covenant Collection (Exodus 20:23-23.19)," *ZAR* 10 (2004): 143-68.

[2] For latest summary review and analysis, see Levinson, "Is the Covenant an Exilic Composition?" 297-317.

[3] Paul Heger, *The Three Biblical Altar Laws: Developments in the Sacrificial Cult in Practice and Theology: Political and Economic Background* (BZAW 279; Berlin and New York: Walter de Gruyter, 1999).

The significance of the altar laws in the Torah, however, is not limited to theological development of Yahwism, but also marks the political importance of Yahwistic cult to the theocratic society. The three different altar laws in the Torah reflect different social contexts in which each altar has a different function. The wooden altar protected by a layer of copper, according to Nahum M. Sarna, was designed as an "altar of burnt offering", mainly for animal sacrifice in the Tabernacle (Exod 27:1-8).[1] The Altar in the DL, on the other hand, is in profound relationship to the concept of Yahweh's exclusive kingship and administrative centralisation in addition to its general cultic function (see chapter 7.C). The altar model in the CC, as Crüsemann has noted, signifies the importance of the nearness of Yahweh to the community (see chapter 1.C.2). The originality and crudity of an earthen or a stone altar might have reflected the style of the ancient cult; however, as a part of state law, the rules emphasise the importance of the relationship and regular encounter between individuals and Yahweh. With the availability of natural materials for the construction, and without geographic restriction on a cultic site, making a crude altar for spontaneous prayers and worship would be possible at any place and at any time. Thus, the altar laws in the CC can be seen as an indication of the significance of personal piety in the theocratic system. It seems, therefore, that the different materials used for the construction of an altar are not the main concern in the Torah;

[1] N. M. Sarna, *The JPS Torah Commentary: Exodus* (Philadelphia: The Jewish Publication Society, 1991), 172-73.

most important is the sovereignty and exclusiveness of Yahweh to the community, which is indeed the key to understanding the new system reflected in the Torah (See chapter 7.C).

3. The Decalogue (Exod 20:2-17)

As the very first part of the legislation given in Sinai discourse, the Decalogue comprises four commandments regarding Israelite obligation towards its patron god Yahweh, and six commandments concerning ordering social relationships among Israelites. Apparently, as the essence and summary of the Hebrew law, it receives a repetitive elaboration in the HC (Lev 19:) and DL (Deut 5:-11:). Although a corresponding sequence between the Ten Commandments and the rule arrangement is still an unsolved issue in modern scholarship,[1] the conceptual correlation and affinity between them are undeniable. Weinfeld has noted that distinctive notions, such as the prohibition of idol worship and false oaths, the commandments to keep the Sabbath and to honour one's parents, and the forbidding of murder, adultery, theft and false witness are reflected in various texts in the Torah and in the HW as a whole.[2]

a. The Position of the Decalogue

The Ten Commandments have been treated as religious belief and prevailing moral orders in Israel in past scholarship.[3] On the other hand, a number of scholars consider the Decalogue as the constitution of Israel.[4] Anthony Philips argues that the

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[1] Georg Braulik, "The Sequence of the Laws in Deuteronomy 12-26 and in the Decalogue" in *A Song of Power and the Power of Song*, 313-35.

[2] Moshe Weinfeld considers that they are not parallels of the Decalogue but rather explanatory commentaries on it. He has observed that the Ten Commandments lie behind Ezekiel (chaps 18 and 22) and the Code of Holiness (Lev 19). See his "The Uniqueness of the Decalogue and Its Place in Jewish Tradition," and Meir Weiss, "The Decalogue in Prophetic Literature," in *The Ten Commandments in History and Tradition* (ed. B. Z. Segal, English version ed. G. Levi; Jerusalem: Magnes Press, 1990), 1-2, 11-21, 67-81.

[3] For a classification of past scholarship, see D. J. A. Clines, *Interested Parties*, 27-32. For theological interpretation of the Decalogue, see D. T. Olson, *Deuteronomy and the Death of Moses: A Theological Reading* (Minneapolis: Fortress Press, 1994), 62-125. For taking the Decalogue as long established religious and moral traditions, see Toorn, K. van der, *Sin and Sanction in Israel and Mesopotamia: A Comparative Study* (SSN 22; Assen: Van Gorcum, 1985), 10-39; For the moral and wisdom origins of the Decalogue, see the review and analsis by Fitzpatrick-McKinley, *The Transformation of Torah*, 118-29; Also Weinfeld's conclusion in his "The Uniqueness of the Decalogue," 21.

[4] Anthony Philips, *Ancient Israel's Criminal Law: A New Approach to the Decalogue* (Oxford: Basil Blackwell, 1970); Daniel See, *The Decalogue: State Law and its Social Functions in Ancient Israel* (PhD diss. Sheffield: University of Sheffield, 1997); D. L. Baker, "The Finger of God and the Forming of a Nation: The Origin and Purpose of the Decalogue," *TB* 56 (2005):1-24.

Decalogue represents a criminal law-code enforceable and applicable in the court, because the Hebrew laws developed from it and a breach of a commandment would endanger the existence of the whole community and result in community prosecution.[1] However, being the summary or principle of the Hebrew codes does not mean that the rules were supposed to be applied in the courts. In fact, as certain scholars realise, the tenth commandment concerning coveting could not be applied since law deals with action in general, rather than thought or feeling.[2] Motive can only be sought when an offence is committed, such as the different motives between a premeditated and an accidental killing or injury. In this regard, the Decalogue can be better interpreted as the principle of the Hebrew norms, which encourages people to memorise in order to conform to the recognised norms, rather than to seek for prosecution in a court system.

Moreover, since constitutional law in modern times means "the rules and practices that determine the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state",[3] the Decalogue alone cannot be considered as the constitution of ancient Israel. Only with those constitutional laws that regulate the governing system in the DL (12:1.-18:22.), can it be counted as the ideological foundation of the constitutional law, given that it indeed defines the fundamental relationship between the divine king, Yahweh, and his subject people Israel, and the relationship between the people and their fellows. This constitutional element can be seen in the DL, wherein the Ten Commandments are exhaustively elaborated with judicious interpretation and contextualisation of the rules in the new circumstances that the new generation will face soon (5-11). Apparently, as the very first part of the code, they in effect function as the conceptual and political premise for the constitution of the governing system and the vital state policies in the DL (12:-18:). The Decalogue, as the essence of the Hebrew law, therefore, cannot be taken as less significant than those constitutional laws in the Torah.

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[1] Philips, *Ancient Israel's Criminal Law*, 10-11.
[2] Dale Patrick, *Old Testament Law* (London, SCM Press, 1985), 58; B. Jackson, "Liability for Mere Intention in Early Jewish law," In his *Essays in Jewish and Comparative Legal History* (Leiden: E. J. Brill, 1975), 202-34. For the review and analysis of the interpretation of the tenth commandment, see A. Rofé, "The Tenth Commandment in the Light of Four Deuteronomic Laws," in *The Ten Commandments in History and Tradition*, 45-65.
[3] E. A. Martin, ed., *Oxford Dictionary of Law* (fifth ed. Oxford: Oxford University Press, 2003), 108; A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law* (14th ed. Essex: Pearson, 2007), 4-5.

b. The Formation of the Decalogue

The important position of the Decalogue seems to be also reflected in its title, עֲשֶׂרֶת הַדְּבָרִים "ten words" (Exod 24:4, 34:28; Deut 4:13). A number of scholars understand that the "ten words" would have suited physically and politically both for the incision of the commandments on two stone tablets and for an easy memorisation of the words with the assistance of ten fingers. Some in fact have attempted to reconstruct the "ten words" by reducing the length of each commandment in order to correspond to the antiquity and originality of the Decalogue.[1] Recent scholars have given up the attempt to reconstruct the origin of the Decalogue, but instead seek to date the present form of the Decalogue in relation to Deuteronomic redaction and place it in a broad socio-religious context in Israel.[2] A better understanding of the Decalogue, therefore, would be in relation to the development of Israelite religion on the one hand, and to the concept of Yahweh's kingship in the Torah on the other.

In the scholarly context that the cultivation of Yahwistic belief, i.e. monolatry, is generally considered to occur from the end of Judean monarchy onwards (see chapter 5.B.1), the formation of the Decalogue, especially the commandments regarding Yahweh's imageless cult and exclusive relationship with Israel, can be seen as an institutional expression of Yahwism in the time when the nation came to redefine its religion and its socio-political relationship with its state god (see chapter 6. A). The formation, or the finalisation, of the Decalogue, therefore, cannot be dated earlier than the rise of Yahwism in Israel in relation to the formation of the concept of Yahweh's exclusiveness (see chapter 5.G). In this regard, the distinctive publication of the Ten Commandments in Exodus, which are understood to be the only commandments enacted directly by Yahweh in a magnificent manner, witnessed by the whole Mosaic community, and written down by Yahweh on the two stone tablets

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[1] D. N. Freedman, *The Nine Commandments: Uncovering a Hidden Pattern of Crime and Punishment in the Hebrew Bible* (ed. Astrid B. Beck; New York; London: Doubleday, 2000), 7, 14-16; E. Nielsen, *The Ten Commandments in New Perspective: A Traditio-Historical Approach* (SBT Second Series 7; London: SCM Press, 1965), 84-86; B. Lang, "Twelve Commandments—Three Stages: A New Theory on the Formation of the Decalogue," in *Reading from Right to Left: Essays on the Hebrew Bible in Honour of David J. A. Clines* (ed. J. C. Exum and H. G. M. Williamson; London: T&T Clark International, 2003), 290-319.

[2] See E. W. Nicholson, *Exodus and Sinai in History and Tradition* (Oxford: Blackwell, 1973), 51-53. For a summary of the view, see R. Albertz, *A History of Israelite Religion in the Old Testament Period, Volume I: From the Beginnings to the End of the Monarchy* (Trans. John Bowden; Louisville: Westminster/John Knox Press, 1994), 214; trans. of Religionsgeschichte Israels in alttestamentlicher Zeit. Göttingen: Vandenhoeck & Ruprecht, 1992. Clines is not interested in dating the text, but notes that the commandments concerning monolatry were intended to make Israel different from other nations. See his *Interested Parties*, 40-42.

with his very own fingers (Exod 20:18-19; 24:12-13; 31:18; 32:15-16; 34:1-4, 27-28), is not necessarily to imply a divine origin, or antiquity, to the rules, but would suggest the importance of the commandments to the reconstitution of the nation at the time of composition and its relation to other laws in the Torah.[1] Thus, it can be reasonably deduced that the Decalogue was composed by Deuteronomic writers as the ideological foundation of the new constitution in the DL (Deut 5:-18:). In order to provide an origin and a paradigm for the new constitution, it was then inserted into the Sinai discourse as the introduction to the concept of Yahweh's kingship in relation to the reconstitution of the nation.

The constitutional position of the Decalogue is also reinforced by its didactic function. The simplicity and paucity of the rules would have enabled the majority of community to learn by heart. It is possible that the Decalogue was made for public education into the essence of Hebrew values.

Our analysis of the codification of the CL thus suggests that Yahwists as the final redactors did not simply recollect different types of the existing rules in the Torah but transformed all selected rules altogether into a new conceptual, political and administrative framework of Yahwistic theocracy. The original judicial, moral and constitutional function of these new and old rules was not lost in the new framework. Rather, they were enhanced as divine legislation, whose position appears to be equivalent to modern legislation. The religious belief and the principle of commonly held norms were also combined in the code, characterising the new system. Thus, Yahwist composition and finalisation can include the associated narrative and those rules embodied with the concept of Yahweh's kingship, such as the Decalogue, the altar laws, and certain rules characterised by Yahwism in the *mishpatim*.

4. The Promulgation of the CL

The link between narrative and law in the Torah is generally considered as artificial in critical study. However, the narrative is important to our understanding of the self-understood national identity in relation to the nature and function of the

[1] E. W. Nicholson, "The Decalogue as the Direct Address of God," *VT* 27 (1977):422-33; A. Philips, "A Fresh Look at the Sinai Pericope: Part 1," *VT* 34 (1984):39-52; idem, "A Fresh Look at the Sinai Pericope: Part 2," *VT* 34 (1984): 282-94.

Hebrew law presented in the Torah. While the narrative serves neither as the actual historical setting for the promulgation of the Hebrew codes (see chapter 1, A), nor as the actual social contexts for the application of the Hebrew laws, as suggested by Carmichael, [1] the correlation between the law and narrative in the Torah can be understood as literary and conceptual in relation to the re-establishment of Israelite statehood after the Exile.

a. Narrative as a Framework

Compared to the cuneiform codes, the CL seems to lack a clear prologue. However, the immediately associated narrative can serve as a prologue to the CL. In spite of literary oddity compared to the cuneiform prologues, on close inspection, the narrative in Exodus (19:1-25) in effect corresponds to the main elements embodied in a cuneiform prologue, articulating Yahweh's sovereignty over Israel and the purpose of the Sinai promulgation. The essential concern of Yahweh's kingship in relation to the governance of the newly formed community is patently in parallel with the propaganda of human kingship in the cuneiform prologues (see chapter 3.A). Thus, despite its ostensible nature, the associated narrative in fact attempts to define the nature and social function of the Hebrew laws that follow. While Yahweh is regarded as the very king of the community, the laws are correspondingly presented as divine law given by the divine king, Yahweh, for the constitution of the nation.

Further, the cuneiform concept of law, such as the divine entrusting of justice to a human agent, publication of the law and deposit of monumental texts are also reflected in the narrative, though in a different manner. In spite of the different social systems reflected in the Hebrew and cuneiform law, the description of the whole Sinai event appears deliberately to follow the fashion of law promulgation in Mesopotamia. The magnificent theophany in the narrative which caused such fear and trembling among the congregation exhibits the majesty of Yahweh as a worrier in a peaceful context,[2] who gave the law as a just king for establishing a just society. In this form, it is not surprising that the publication of the code, chiselling the laws onto two stone tablets and depositing the code in a most sacred place, explicitly reflected the ancient convention of law enactment.

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[1] C. M. Carmichael, *Law and Narrative in the Bible: The Evidence of the Deuteronomic Laws and the Decalogue* (Ithaca: Cornell University Press, 1985). For a critical review of his work, see B. M. Levinson, "Calum M. Carmichael's Approach to the Laws of Deuteronomy," *HTR* 83 (1990): 227-257; and B. S. Jackson, "Review of Carmichael, *The laws of Deuteronomy*," *JJS* 27 (1976): 84-87.

[2] For the review of the interpretation and comparative analysis with correspondent Akkadian texts, see Loewenstamm, *Comparative Studies in Biblical and Ancient Oriental Literatures*, 173-89.

Yahweh's office in the human kingdom seems also to be reflected by the invitation to divine patronage of law and of justice. While the cuneiform epilogues ascribe the role to the council of gods, the Torah leaves it directly to Yahweh alone in accord with the oneness and exclusiveness of Yahweh. Correspondingly, the curses and blessings concluded in the codes sound more powerful than those in a treaty or a law-code, expected to be directly executed by the authority of King Yahweh. We may conclude, therefore, that in spite of the theocratic system and peculiar literary presentation of the Hebrew law, the promulgation of the CL in the Torah was evidently premised on the prevailing concept of law. Thus, the immediate narrative in the Exodus in fact provides the essential elements for the introduction of the CL as state law. This can be are outlined as follows:

A. Preamble – the proclamation of Yahweh's kingship over Israel (19:1-25)

1. The setting of the promulgation

Date: Third new moon after departure from Egypt

Place: Mount Sinai

Mediator: Moses (3.7.9)

2. The purpose of making law—constitution as a theocracy

Israel's preparation for the promulgation (9b-15)

The presence of Yahweh as a law-giver-theophany (16-25)

B. The corpus of the law (20:1-23:19)

C. Blessings and curses: Yahweh as the king and patron god of justice (23:20-33)

D. Verification of the law (24:)

1. Israelite pledge to obey the law (24:1-3)
2. Ceremony (24:4-8)
3. Sealing the law book (24:9-18)

a. Theophany (9-11), monumentalising the law (12)

b. The role of the mediator (13-18)

It is clear, therefore, that the nature and function of the law are decided by the narrative in the Torah in relation to the authority of the laws.

b. Law and State Administration

While the immediate narrative provides a conceptual setting for the recognition of the CL as state law, the long associated narrative exhibits the function of law in state administration. The narrative clearly demonstrates that it was

administrative overload in the newly-formed community that led to immediate administrative reforms and establishments in the community, followed by law-giving in Sinai discourse. The appointment of the officers and judges, the formalisation of the administrative system (Exod 18:17-26), and the enactment of the law are all directly related to the governance of the newly emerged nation. Accordingly, the theocratic system, which is regarded as the recognised solution to both political and administrative demands of the Mosaic community, could provide a new political identity and governing system for the formation of Israelite statehood.

The ostensible narrative thus recaptures intrinsic socio-political factors for the reorganisation of the nation. It appears that while serving its primary purpose as a part of the historical narrative in the HW, the narrative was deliberately designed to define the nature and function of the Hebrew law in the new ideological and socio-political framework provided in the Torah. Accordingly, our understanding of the position of the Hebrew law at the time of its finalisation can be enlightened by the elements embedded in the narrative.

E. Legal Leap from Monarchical to Constitutional Law

The DL is introduced in the Torah as the second revised law-code made for the next generation of the exodus. The code exhibits the full-scale legislative position and function in relation to the establishment of Israelite statehood in Palestine (see chapter 7). Thus, there must have been a legal breakthrough taking place in Israel from common monarchical law to a constitutional position of law. Since the direct link between a king and a law book can only be found in the DtrH (2 Kgs 22:) in the entire HW, modern scholars have connected the composition of the origin of the DL with King Josiah's reform reflected in DtrH. This position, however, needs to be further considered in the light of the general position of law in a monarchical power structure. In doing this, we need to reinvestigate the Deuteronomistic narrative in relation to the position of the law at the end of the monarchy.

1. King, Law and Reform

The narrative impresses readers that the king's reform was premised on a recovered law book, ספר הברית. Early scholars read the story either as historical or fictional,[1] and the law book has been more or less connected with King Josiah's reform and with the codification of the DL in historical reading of the text.[2] However, the dependence of Josiah's reform on the recovered law-book cannot be firmly established in a monarchical power structure (see chapter 3.C). The reform might, indeed, have been launched by King Josiah, as a number of scholars have maintained,[3] the scale however cannot be asserted and the narrative cannot be taken as evidence for the self-supported claim. Several elements have to be reconsidered as to the correlation between the reform and the law.

First of all, we should be aware of two related yet different aspects of law hinted at in the narrative. One is concerned with the existence of a law-code prior to the dramatic discovery, the other the actual function of the code in the subsequent reform. While the former can be established in our reconstruction of the formulation of an early code in Israel, the latter can be better understood in the light of the general position of law in a monarchic system. Unfortunately, the reconstruction of the origin of the DL in relation to the reform in modern scholarship is slanted by the biblical claim and misled by the concept of modern law. This has consequently overestimated the status and function of written law in ancient monarchical systems in general, and in Josiah's reform in particular.

Our analysis of the position and function of cuneiform codes in fact suggests that in spite of the increasing importance of written law in a highly centralised monarchy, written law remained of secondary importance to the new orders of those contemporary rulers (see chapter 3.C.1). Hence an ancient law-code cannot be

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[1] For a recent review of the scholarship on this issue, see R. H. Lowery, *The Reforming Kings: Cults and Society in First Temple Judah* (JSOTSup 120 (Sheffield: JSOT Press, 1991), 196-201; M. A. Sweeney, *King Josiah of Judah: The Lost Messiah of Israel* (Oxford: Oxford University Press, 2001), 137, n.2; L. K. Handy, "Historical Probability and the Narrative of Josiah's Reform in 2 Kings", in *The Pitcher is Broken: Memorial Essays for Gösta W. Ahlström* (ed. Holloway and Handy), 252-75; and S. L. McKenzie, "Deuteronomistic History," *ABD* 2:160-68; N. Lohfink, "Deuteronomy," *IDB* (S) 229-232; M. Weinfeld, *Deuteronomy 1-11* (AB 5; New York: Doubleday, 1991), 1-122.

[2] See the review by E. W. Nicholson, *Deuteronomy and Tradition* (Oxford: Basil Blackwell, 1967), 1-17.

[3] John Day, *Yahweh and the Gods and Goddesses of Canaan* (JSOTSup 265; Sheffield: Sheffield Academic Press, 2000), 181-93.

identified with the absolute position of modern law in a democratic power structure. The increasingly absolute power of a monarchical king in the ancient Near East, probably repeated with variation in other regions of the ancient oriental world, meant that a ruler might have launched a reform with or without the support of former royal policy.

Against such a conceptual and socio-political background, King Josiah could have initiated the reform with or without the support of former dynastic laws. Accordingly, the king did not have to "plant" a law book in the state temple in order to justify the reform with the "recovered" laws. But it is possible that the king might have sought support from a tradition or precedent for his own scheme so as to convince and strengthen those who were hesitant to be in line with his radical schemes.[1] It seems likely that rather than discovering a "law-code" by accident, the king purposely sought for a relevant royal document in the temple in order to provide political and ideological buttressing for his nation-wide reorganisation.

Further, our analysis of the incompleteness and lack of systematisation of the ancient codes demonstrates that the ancient codes generally functioned as a complement to, rather than a replacement, for the well-established norms (see chapter 3.C.2). While the depth of Josiah's reform appears unprecedented in the DtrH, and the reform could not have been limited to cultic reorganisation, it would have been impossible to find a royal precedent compatible with Josiah's reorganisation (see Chapter 5.F and G). Thus, a direct correspondence between the written law and reform seems quite unlikely in Josiah's time.

On the other hand, it is possible that certain measures introduced in Josiah's reform were originally former royal policies included in the "law book" found in the temple. In this regard, there might have been a partial correspondence between the law book and reform. Thus Josiah's reform would have shared certain similarities with former royal reforms on the one hand,[2] and manifested distinctive elements of

[1] G. W. Ahlström points out that the king could have taken initiative for the reform without any legal basis, and the interrelationship between a law-book and the reform in the DtrH was to authorise the reform with the claim of divine approval. See his *Royal Administration and National Religion in Ancient Palestine* (SHANE 1; Leiden: Brill, 1982), 72-73.

[2] The DtrH and ChrH apparently appreciate several reforms conducted by certain Judean kings: cultic and political reform by King Asa (1Kgs 15:9-24; 2Chr 14:2-16:14), judicial reform and administrative centralisation by King Jehoshaphat (1Kgs 22:41-51; 2Chr 17:1-21:1), the repairing of the state temple by King Joash (2Kgs 11:21-12:16; 2Chr 24:1-14), and nationalism motivated administrative and cultic centralisation by King Hezekiah (2Kgs 18:1-20:21; 2Chr 29:1-32:33). For a summative interpretation of these reforms, see Chapter 5.

his own innovation on the other. It seems that all the reforms undertaken in the Judean monarchy eventually culminated in the most profound and decisive reform by King Josiah in the HW. Although the DtrH and ChrH are primarily concerned with the religious and cultic aspects of the reforms, historical reading of these reforms suggests that political and administrative centralisation would be more significant than cultic reform in Josiah's state reorganisation (see chapter 5.E, F and G). It is possible, therefore, that based on the policies made in former royal reorganisation, Josiah conceived a similar, yet more radical scheme for a profound state reorganisation. This would fit both the general position of law in a monarchical government and the superior power of the king in making new law for the nation.[1] Thus certain former state policies could have been re-introduced by King Josiah and the effectiveness of the old and new laws depended on the king's interests in law rather than on the rigidity of the law itself. Accordingly, the reform would mean the existence of a "law book" in the Judean monarchy on the one hand and the development of the law in the hands of Josiah on the other.

Further, since a firmer establishment of the legislative position of those effective laws in the regime could enhance the king's own authority and maintain the outcome of the reform, it would be possible that the king's ambition and vigorous manner towards reform and law could have motivated him to enhance the legislative function of the law. Even so, the elevation of law to a constitutional position in Josiah's time as in the DL in which even a king has to be subordinate to the law seems highly unlikely.[2] As we find in ancient imperial China, while Qin (221–209 BCE) law reached its maximum position of authority in imperial times, it was still subject to the whims of the current king, if only to him (see chapter 3.C). Codification of a law-code in ancient monarchy might mean further enforcement of certain recognised laws, but it by no means suggests that law could have been elevated to the position of modern constitutional law as in a democratised power

[1] For the judicial function of a king, see R. de Vaux, *Ancient Israel: Its Life and Institutions* (trans. John McHugh, 2nd ed.; London: Darton, Longman & Todd, 1965), 150-52; translation of *Les Institutions de l' Ancien Testament*. Paris: Les Editions du Cerf, 1957; H. J. Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East* (Minneapolis, 1980), 40-49; and M. Z. Brettler, *God is King*: *Understanding an Israelite Metaphor* (JSOTSup 76; Sheffield: Sheffield Academic Press,1989), 109-13.

[2] For an analysis of the ideological contradiction between the kingship in the DL and the royal ideology in the ancient Near East reflected in the DtrH, see B. M. Levinson, "The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah." *VT* 51(2001): 511-534.

structure. It would be impossible, therefore, for King Josiah to perceive a law to be constitutionally above him, even though he might have indeed respected certain rules established either by himself or his royal ancestors.

We therefore have good reason to believe that the codification of the origin of the DL resulted *from* rather than *in* Josiah's reform. The Deuteronomistic narrative should be correspondingly seen as neither historical nor fictional, but as political and conceptual propaganda for the establishment of the constitutional position of the Hebrew law in Israelite society since the death of King Josiah (see chapter 5.G). The dramatic discovery of a lost law book in the DtrH, as suggested by Stott, was particularly to enhance the credibility of the law book [1] and the status of written law in general at a time when written law became paramount for the reorganisation of exilic Israel. In view of these, the connection between a "law book" and Josiah's subsequent reform in the DtrH can be seen as a later Deuteronomistic reflection of the reform when the legislative position of law was constitutionally established in an exilic community (see chapter 7).

2. DL in the Book of Deuteronomy

The presentation of the DL in its present form has triggered scholarly debate as to the purpose of the composition. Mayes has argued that the DL should be seen as a part of historical narrative in the HW as a whole, rather than as a piece of legislation presented with a historical narrative. While noting the treaty forms, vocabulary and ideas that have influenced the formation of the book, the book is seen to be primarily concerned with covenant making or renewal in the narrative context of leadership transition.[2] Instead of reading the text as a treaty, or as a covenant, the present form of the book is suggested to be read as the very first part of the extensive work of DtrH that continues till the end of the second book of Kings.[3]

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[1] Katherine Stott argues that a rhetorical understanding of the narrative receives additional support from comparison with classical literature, where stories about lost and found documents are widely used as a literary ploy to bolster the credibility of the texts within which they appear. See her article "Finding the Lost Book of the Law: Re-reading the Story of 'The Book of the Law' (Deuteronomy–2 Kings) in Light of Classical Literature," *JSOT* 30 (2005): 153-169; for the analysis of a typological composition between a lost king and a lost law book in the HW, see Cristiano Grottanelli, "Making Room for the Written Law," *HR* 33 (1994): 246-264.

[2] A. D. H. Mayes, *New Century Bible Commentary: Deuteronomy* (Grand Rapids: Eerdmans, 1979), 30-34.

[3] Ibid., 34-47.

Premised on the supposition, Mayes believes that the formation of the book of Deuteronomy went through three major stages: the first stage was the formulation of an original law-code, which was then transformed into a treaty form at the second stage, expressing a covenantal relationship. In the final stage, it was incorporated into the historical books as an integrated part of DtrH. Thus the original character of the book as a law-code was completely transformed first in the form of the covenant and then incorporated into the historical framework by Deuteronomistic editors.[1] The laws included in the book are consequently interpreted as covenant law that neither should be taken as normative law applied in daily administration, nor as the law specially designed for judicial purposes, nor as humanitarian concerns in an actual community, but rather as a history, or as legal resource in his later interpretation,[2] teaching Israel with exhortation and encouragement. In this form, Mayes understands that the apodictic laws were specially designed purely for the purpose of admonition, and the casuistic laws, which are believed to be passed on to Israel through the Canaanites, were already divorced from their original judicial context, and serve a new didactic purpose in the present form of the book.[3]

Nevertheless, a number of problems appear to inhere in Mayes' seemingly perfect interpretation. First of all, he apparently mixes the actual socio-political context of the formation of the DL with the ostensible setting provided in the book. The combination of the narrative and law, as demonstrated in the above analysis, was made at the final stage of the composition and the connection between them should be understood as conceptual rather than historical (see D.4). In this regard, the law and the history of Israel should be understood as two originally separate agendas in Israel which were only artificially connected in the Torah in order to give a conceptual setting for the position of the law. Thus, while the narrative was designed to lend an indisputable authority to the codes, the formation of the origins of the codes can be better associated with the monarchy instead of with the Mosaic community. The only historical account which can be connected with DtrH is the last few chapters (31:1-34:12), as Thomas Römer points out, which can be seen as an

[1] Ibid., 47-55.
[2] Mayes, "On Describing the Purpose of Deuteronomy," *JSOT* 58 (1993): 13-33.
[3] Mayes, *Deuteronomy*, 71-81.

introduction to the DtrH.[1]

Further, while Mayes correlates the book of Deuteronomy with the DtrH, the correlation between the book and the preceding books equally demands an interpretation. If Deuteronomy should be read as history, then the books of Exodus, Leviticus, and Numbers, which are stylistically and topically in parallel with D, should be indiscriminately treated as a part of Deuteronomistic history. This would force us to change the premise of the discussion as a whole, and the old question can be retriggered as to how to explain the repetition of the historical accounts and of legal texts in the Torah. In fact, rather than a real historical narrative, the recounted historical events in Deuteronomy (1-3) are deliberately designed to manifest Yahweh's sovereignty over Israel, thereby obliging the nation to abide by the laws that follow. Thus the narrative was designed as historical admonition in order to remind the new generation of the paramount importance of the law to their success in establishing a political kingdom in Palestine.

Moreover, unlike the historical accounts in the DtrH, the first four chapters of the book of Deuteronomy, as a specially designed prologue to the law-code that follows, summarises the current situation of Israel in relation to the former generation, in order to prepare the young generation for a successful conquest of the land. The narrative reconfirms the authority of the law, the administrative demands arising from the community (1:9-18) and the paramount importance of law enforcement to the imminent conquest of the land (1:6-8, 1:19-3:22). Via commenting on these past national events, a rhetorical effect is thus created and culminates in the conclusive admonition in chapter 4: the new generation must observe the laws carefully and diligently in order to successfully establish Israelite statehood in Palestine (4:1-40). Such admonition in effect opens the presentation of the laws in the book. Thus, the present form of the book appears as a law book made for the future generation, rather than a textbook of history in which the laws are seen as a part of history without any meaning to the present generation. In sum, although this apparent historical narrative cannot be read literarily, it does, nevertheless, embody the very purpose of the composition–to provide a socio-political model and dynamics for the current generation, the generation of the exiles.

[1] Thomas Römer, "Deuteronomy in Search of Origins," in *Reconsidering Israel and Judah: Recent Studies on the Deuteronomistic History* (ed. G. N. Knoppers and J. G. McConville, SBTS 8; Winona Lake, IN: Eisenbrauns, 2000), 112-38.

3. Legal Breakthrough in the Torah

The constitutional nature of the DL can be seen from its primary interest in regulating each governing institution within the theocratic system. Apparently, while criminal, civil and administrative affairs are the major interest in the cuneiform codes, the DL are exceptionally concerned with Yahweh's kingship in relation to the governing system (16.18–18.22). It seems that these laws aim at replacing, rather reforming, the former monarchic system in Israel, even though at certain points the DL might have reflected certain royal policies made in monarchical times. In this regard, the DL cannot be seen as monarchical law, but as theocratic law made for exilic Israel in which written law is regarded as the political and ideological foundation of the reconstitution of the broken nation.

A number of scholars have noted that the passage legislating for a distribution of political power among the judiciary, the human kingship, the priesthood, and prophecy would have effectively deprived the monarchical king of his powers and therefore would not be a monarchical constitution, but an exilic response to the past monarchy and its abuse of power.[1] Indeed, the laws in the Torah are not presented as monarchical law enacted by a human ruler, but as divine law promulgated by the state god Yahweh. Thus Yahweh appears to succeed to the throne in Israelite society and the laws in the Torah reflect legal development in monarchical Israel on the one hand, and the Yahwists' transformation of the monarchical law into constitutional law on the other. By placing all human individuals and governing institutions under Yahweh's authority, the law in effect materialises King Yahweh's earthly office and its position is correspondingly enshrined as a constitution in accord with the divine nature of the law. The Torah thus exhibits a significant legal leap from monarchy to theocracy.

[1] Norbert Lohfink, "Distribution of the Functions of Power: The Laws Concerning Public Offices in Deuteronomy 16.18–18.22," in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (ed. Duane L. Christensen; Sources for Biblical and Theological Study; Winona Lake, IN: Eisenbrauns, 1993),336-52; trans. of "Die Sicherung der Wirksamkeit des Gotteswortes durch das Prinzip der Schriftlichkeit der Tora und durch das Prinzip der Gewaltenteilung nach dem Ämtergesetzen des Buches Deuteronomiums (Dt 16,18–18,22)," in *Testimonium Veritati. Festschrift W. Kempf* (ed. H. Wolter, FTS 7; Frankfurt am Main: Knecht, 1971), 143-55; Udo Rüerswörden, *Von der politischen Gemeinschaft zur Gemeinde: Studien zu Dtn 16,18–18,22* (BBB 65; Frankfurt-am-Main: Athenäum, 1987), 50-66.

A further question can be raised as to at which particular point in history that such a legal breakthrough could have achieved in Israelite society. Our analysis of the DL suggests that its composition took place after the destruction of the monarchy and that its purpose was to reorganise the broken nation. It seems quite likely that codification of the law book resulted first from Josiah's reform towards the end of his reign and then from its adherents after his sudden death. In order to fight against the unpromising reality that Josiah's successors were unwilling and unable to maintain the outcome achieved in the king's reform, the code would have received its most significant reformation when the monarchy and the temple were finally ruined, and the nature of editorial work would have shifted from simply preserving royal legacy to positively reconstituting the nation (see chapter 5.G. 2). Admittedly, the law would have been invested with divine authorship and authority in place of its lost royal patron; and a new socio-political system would have also be conceived in place of the lost monarchy. In this regard, the formative period for such a legal breakthrough can be placed between the death of King Josiah and the exilic period.

Conclusion

Our reconstruction of the legal development and the formation of the Hebrew codes in Israelite society suggests that the intensive literary and legal contact between the cuneiform and Hebrew cultures brought about by the colonisation of the Neo-Assyrian Empire in Palestine provided the most logical context for the development of the Israelite legal system. While the formulation of an early Hebrew code can be connected with the development of Judean statehood, especially in the aftermath of the fall of Samaria, the position and administration of law in the monarchical power structure in the Judean monarchy would not be substantially different from the cuneiform laws in Mesopotamia. Admittedly, the conceptual breakthrough and literary transformation of the Hebrew codes into a theocratic framework in the Torah could have been triggered only by the final destruction of the Judean monarchy leading to the perception of a new socio-political system for state restoration.

Thus, the legal texts in the Torah could have borne witness to the preservation of the Hebrew legal traditions on the one hand, and the transformation of the traditions into a new conceptual and political framework on the other. Rather than as

a natural result of legal and conceptual development achieved in the monarchical system, the significant legal leap created in the Torah and recognised by early Judaism can be better interpreted as an inevitable concomitant to the change of socio-political and ideological framework after the Exile. A proper understanding of the power structure and ideological reorientation in the Torah, therefore, should be connected not only with the exilic circumstances, but also with the the ideological development of Yahweh's kingship and the rise of the Yahwists as a powerful political entity in Israel.

Chapter Five
The Development of the Concept of Yahweh's Kingship

Introduction

The Torah considers Yahweh as a national god who takes on qualities of human kingship in Israelite society. This in effect suggests an ideology which is essentially distinct from that of Mesopotamia and Egypt, wherein the relationships between gods, kings and peoples are envisaged differently. Modern debate on the concept of Yahweh's kingship represents two opposing views regarding its origins in relation to monarchical Israel. While certain early scholars regard it as a feature of Israelite monarchy, some other scholars suggest that the concept was only composed shortly after the Exile without any substantial historical and social foundation in Israelite monarchy.[1] Other scholars, on the other hand, maintain that Israel must have been familiar with the concept of the kingship of God at a very early time as a part of the ancient Near Eastern world. [2] A proper understanding of the concept in relation to the political power structure perceived in the Torah, therefore, should be placed in broader conceptual and social contexts in which a national god could have possibly been considered to rule society with written law.

In doing this, I will first place the concept of divine kingship in the ancient Near Eastern context to show how the concept is related to the office of human kingship. I will then trace back the development of Yahwism in Israel in relation to the actual position of state deity in national life in monarchic Israel. Finally, I will particularly explore the exilic attribution to the formation of the concept in order to understand how and why the concept culminated in the Torah.

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[1] See J. C. de Moor, T*he Rise of Yahwism: The Roots of Israelite Monotheism* (BETL, 91; 2nd ed. Leuven: Peeters, 1997), 206-07, n. 498.
[2] Ibid., 207; F. M. Cross, *Canaanite Myth and Hebrew Epic* (Cambridge: Massachusetts: Harvard University Press, 1973), 112-44; T. N. D. Mettinger, *In Search of God: The Meaning and Message of the Everlasting Names* (Philadelphia: Fortress Press, 1988), 92-122.

A. The Concept of Divine Kingship in Contexts

The concept of divine kingship had its broad political context in the ancient Near East before the emergence of Israelite statehood. Ideologically, the concept is closely connected with the interpretation of dynamic power demonstrated both in the natural and the human worlds.[1] In spite of the differences in religious and political manifestation, the idea that gods ruled the nation through human agents was maintained throughout the ancient Near East as a whole. The exercise of human political power on behalf of gods, on the other hand, was manifested differently in Mesopotamia from ancient Egypt.

1. Divine Kingship in Mesopotamia

Mesopotamians seem to see the cosmos and natural world as the dominion of the gods; the human world is, however, in direct relation to human leadership rather than to divine kingship.[2] Although conceptually the power of the gods would have reached the human world and was in direct relation to the office of human kingship, the people were not in direct relations with the gods, but with their kings who were on earth, in position to establish the political regime and govern the nations. Thus the office of human kingship appears to stand between the people and the council of the gods. The prologue-epilogue framework of the cuneiform codes, which demonstrates the relationships between the gods, the kings and the people, shows that a king's primary responsibility was to secure peace and to establish social order on behalf of the council of the gods, and the law-codes are explicitly ascribed to the human king rather than to the deities (see chapter 3. A. 1 and 2).

It seems that the importance of the legitimacy of individual kingship had led the Mesopotamian kings to get themselves ritually legitimated via priestly

[1] For the review and analysis of previous scholarship on this issue, see B. Albrektson, *History and the Gods: An Essay on the Idea of Historical Events as Divine Manifestations in the Ancient Near East and in Israel* (CBOTS1; Lund: Berlingska Boktrycheriet, 1967), 11-23.

[2] The leaders are represented by elders and assembly in the myths. See Stephanie Dailey, *Myths from Mesopotamia: Creation, the Flood, Gilgamesh, and Others* (ed. trans. with an introduction and notes, rev. ed.; Oxford: Oxford University Press, 2000), 18-24; Albrektson, *History and the Gods*, 42-51.

recognition. This kind of legitimisation is mainly resolved by religious and conceptual association between human and divine kingship. In this regard, a Mesopotamian king would not be considered a biological son of a deity as in Egypt, but more likely as a deity-appointed ruler. The political factors of human kingship were in effect determined in advance by the individual king's capacity for overcoming his political and military woes. It can be said, therefore, that the connection between Mesopotamian kings and the council of gods would be more conceptual and ritual than political. The polical and military interruptions occurring in certain regimes does not seem to be interpreted in contradiction to the common concept that the power of the rulers was directly from the deities and the prestige of the monarchy depended on the prestige of the state god.

2. Divine Kingship in Egypt

The more than three thousand years of Egyptian statehood distinguished itself from the parallel civilisation in Mesopotamia in many ways. According to a number of scholars, Pharaonic kingship was central to Egyptian society which considered the first state the gods created was perfect and balanced, and the commonest obligation of mankind as gods' children was to follow the well-established orders of the universe.[1] The system, *ma'at*, underlying the world at the creation,[2] therefore, should be continually upheld through mankind's responsive cooperation with the deities. Even Pharaoh, who ruled the nation as the biological son of god,[3] was also simultaneously subjected to the orders and obliged to rule the earth in accordance

[1] E. Horung, *Conceptions of God in Ancient Egypt: The One and the Many* (trans. John Baines; Ithaca; New York: Cornell University Press, 1982), 198; trans. of *Der Eine und die Vielen: ägyptische Gottesvorstellungen* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1973); John Baine, "Ancient Egyptian Kingship: Official Forms, Rhetoric Context," in *King and Messiah in Israel and the Ancient Near East: Proceedings of the Oxford Old Testament Seminar* (ed. John Day, JSOTSup 270; Sheffield: Sheffield Academic Press, 1998), 16-53.

[2] B. J. Kemp points out that while the term is translatable as "justice" or "truth", its meaning goes far beyond legal fairness or factual accuracy, but referred to the ideal state of the universe and society and was personified as the goddess *Ma'at*. See B. G. Trigger and B. J. Kemp et al, *Ancient Egypt: A Social History* (Cambridge: Cambridge University Press, 1990, first published 1983), 74. For a detailed treatment of the interpretation of the term, see Maulana Karenga, *Maat: the Moral Ideal in Ancient Egypt: A Study in Classical African Ethics* (New York and London: Routledge, 2004); and Anna Mancini, *Maat Revealed: Philosophy of Justice in Ancient Egypt* (United States: Buenos Books America, 2004).

[3] For more information, see George Steindorff and K. C. Seele, *When Egypt Rules the East* (Chicago: University of Chicago Press, 1942), 56-58.

with *ma'at*.[1] Disorder or chaos could be created by rebellious humans and *ma'at* might be inoperative sometimes, "characterised by social upheaval, the perversion of justice, lack of security against foreign interference, natural calamities, god's abandonment of man (and) personal alienation from the world", but had never been able to overpower the divine will demonstrated in the justice and order established by the gods.[2] While the gods were responsible for fighting the power of chaos in the sky and the underworld which had never been conquered entirely at the creation, kings were correspondingly assigned for the battles that occurred on earth.[3] These fundamental concepts had dominated ancient Egypt and shaped the fundamental political system of society, and left their distinctive mark on architecture and art, such as the pyramids, which witness to the magnificence and permanence of Egyptian values. Correspondingly, this philosophical framework and the strict socio-political hierarchy created by Pharaoh would not have allowed any radical change to be made in society. This may explain why no significant law-code that so often signified a radical change in society has been recovered from ancient Egypt[4] in spite of its highly organised state administration.[5]

Apparently, the kingship of the gods had its maximum manifestation in the concept and office of human kingship in ancient Egypt. It seems that while the concept of divine kingship provided ideological legitimacy for the office of human kingship in Mesopotamia, it found its political realisation in the office of human kingship in ancient Egypt.

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[1] B. J. Kemp has noted the centrality of the concept of *ma'at* to the Egyptians' views of kingship. See *Ancient Egypt: A Social History* (Cambridge: Cambridge University Press, 1990), 74-76.

[2] Ibid., 75 and notes.

[3] Horung, *Conceptions of God in Ancient Egypt*, 210-211; Amélie Kuhrt, *The Ancient Near East* vol. 1, 147-48.

[4] David Lorton suggests the existence of a highly organised legal system in Egypt without the assistance of any codified law. See his "The King and Law," *VA* 2 (1986) 53-62. P. W. Pestman has also noted that legal texts, such as official records of lawsuits or contractual agreements appear rare from Old and Middle Kingdoms, and there were almost no traces of a law code or legal promulgation before the third century BCE. See his "Law of Succession in Ancient Egypt," in *Essays on Oriental laws of Succession* (ed. J. Brugman et al; Leiden: E. J. Brill, 1969), 58-77. While agreeing that it remains uncertain as to how far there was a central body of law, Kemp points out that the recovered late Middle Kingdom papyrus dealing with the operation of criminal processes in effect implies the existence of a very detailed law code which has otherwise not survived. See *Ancient Egypt: A Social History*, 80-84.

[5] Surviving documents indicate that as wide a variety of legal dealings occurred in Egypt before Alexander's conquest, involving marriage, divorce, sales, gifts, property divisions, contracts to loan, sale documents, slave transactions as that found in Mesopotamia. See Erwin Seidl, "Law" in *The Legacy of Egypt* (ed. S. R. K. Glanville; Oxford: The Clarendon Press, 1942), 198-218.

This prevailing concept of kingship, on the other hand, is evidently developed in the Torah in a different way, wherein divine kingship is infinitely exalted and the office of human kingship is severely undermined and restricted by the law (see chapter 7.B). The sharp contrast between divine and human kingship in the Torah thus needs to be further investigated in the light of the development of Israelite religion in the course of the history of Israel.

B. The Establishment of State Religion in Israel

The Yahwistic cult might have originated at a point of time in pre-Israel, as some scholars have proposed, upheld by a group of people who later formed a part of the population of Israel.[1] However, there is no material evidence for the early existence of a Yahweh cult in a world dominated by polytheism, and the biblical claim that Yahweh rather than El was the original chief god of the Israelite people who came out of Egypt[2] was probably motivated by the Yahwistic propaganda of later redactor(s). The questions that need to be raised are why and by what specific socio-political force was Yahweh exalted and replaced El, and how did Yahwism come to political existence in Israel? Without a conceptual breakthrough and political enforcement, this early polytheistic form of Israelite religion seems quite unlikely to have evolved in the direction of the exclusiveness of a state cult.

1. The Establishment of the Centrality of Yahweh

Modern scholarship has placed the emergence of the Yahwistic monolatry in the later monarchy and associated texts in HW. The classical prophets, such as Hosea, Amos and Jeremiah, the royal reforms by King Hezekiah and King Josiah, the Deuteronomic reforms reflected in the book of Deuteronomy, and the oracles of Second Isaiah are regarded as significant in the formation of Yahwistic monotheism

[1] de Moor, *The Rise of Yahwism*, 208-70.
[2] Mettinger, "The Elusive Essence: YHWH, El and Ball and the Distinctiveness of Israelite Faith," *Die Hebräische Bibel und ihre zweifache Nachgeschichte Festchrift für R. Rendtorf* (ed. E. Blum et al; Neukirchen–Vluyn: Neukirchener 1990), 393-417. For a detailed treatment, see M. S. Smith, *The Origins of Biblical Monotheism: Israel's Polytheistic Background and the Ugaritic Texts* (Oxford: Oxford University Press, 2001), 135-48.

in Israel.[1] Three distinctive views have characterised modern scholarship.[2] The conservative view suggests that the religion of pre-Israel was already monolatry in character with the emphasis of devotion to one deity, without denying the existence of other deities. And the social milieu for the religion is in associated with the monarchy which is seen as a component of the religion. Accordingly, Yahwism is seen as being naturally developed from an old tradition to an institutionalised religion, in spite of the threat of polytheism posed from within and outside the nation.[3] In contrast to this, the other two contesting views see the early Israelite religion as polytheistic in nature, and as a branch of Canaanite religion till the late formative period. While one maintains the period from the collapse of the northern monarchy down to the Exile for the intellectual breakthrough of Yahwism,[4] the other argues for the post-exilic emergence of Yahwism as the radical result of the influence of Persian Zoroastrian monotheism.[5]

In spite of the diversity of scholarship in the study of Israelite religion, with more archaeological and epigraphic evidence surfacing over recent decades, a general agreement has been reached that Israelite religion prior to the establishment of the monarchy was an offshoot of Canaanite culture and the forms of worship shared much in common with other popular cults without any intended differentiation.[6] The main disagreement is the defining period, one side insisting that Josiah's reform was a decisive state for the formation of the concept of exclusiveness

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[1] See the summary by R. K. Gnuse, *No Other Gods: Emergent Monotheism in Israel* (Sheffield: Sheffield Academic Press, 1997), 69.

[2] For a relatively detailed review, ibid., 73-128. For a brief review, see David L. Petersen, "Israel and Monotheism: The Unfinished Agenda," in *Canon, Theology, and Old Testament Interpretation: Essays in Honor of Brevard S. Childs* (ed. G. M. Tucker et al; Philadelphia: Fortress Press, 1988), 93-97.

[3] For a summary review, see Gnuse, *No Other Gods*, 105-15.Y. Kaufmann, *The Religion of Israel from its Beginnings to the Babylonian Exile* (trans. and abridged by M. Greenberg; New York: Schocken, 1960), 134-47; J. H. Tigay, *You Shall Have No Other Gods: Israelite Religion in the Light of Hebrew Inscriptions* (HSS 31; Atlanta: Scholars Press, 1986), 37-41; de Moor, *The Rise of Yahwism*, 206-369.

[4] Gnuse, *No other Gods*, 74-105.

[5] Ibid., 109-23.

[6] Cross, *Canaanite Myth and Hebrew Epic*, 91-111; M. S. Smith, *The Early History of God: Yahweh and the Other Deities in Ancient Israel* (2nd ed.; Michigan and Cambridge: Grand Rapids, William B. Eerdmans, 2002), 19-64; B. Halpern, *The Emergence of Israel In Canaan* (SBLMS 29; Chico & California: Scholars Press, 1983). While believing the existence of pre-Yahwism during the period of the settlement, Max E. Polley suggests that Yahweh and Baal were both worshipped with similar cultic rites in Israel. See his *Amos and the Davidic Empire: A Socio-Historical Approach* (New York and Oxford: Oxford University Press, 1989), 31-32. Also see the introductive chapter of W. I. Toews, *Monarchy and Religious Institution in Israel under Jeroboam I* (Atlanta: Scholars Press, 1993), 5-22; John Day, *Yahweh and the Gods and Goddesses of Canaan*, 226-33.

of Yahweh, the other considering the exilic period and even post-exilic periods as the most defining period for the appearance of exclusiveness of Yahwism in the HW.

Different interpretive models are thus perceived to describe the process of the development of Israelite religion, focussing around two main approaches: evolutionary and revolutionary. While the evolutionary model is adopted to explain a natural, slow, indefinite process of development, the revolutionary model describes a radical, deliberate change in religious beliefs and practices.[1] Although both models represent a linear forward-moving pattern, they cannot include those "anomalous" backward movements in the process. Hence, a monolatrous religion might not have necessarily evolved into a certain form of monotheism, but possibly regressed to polytheism due to certain reasons, such as deliberate changes made in state religious policies, or the persistence of popular religious practices. Modern anthropologists in effect have observed that the different levels of social practice could have naturally co-existed in different regions without deliberate distribution or restriction. In fact, there are various religions in the modern world, and even within a single religion, practices may be various and diverse.

The HW also indicates that the early Yahweh cult actually co-existed and co-practised with other cults without deliberate ideological orientation and political preference. In this general trend, a primitive or natural form of Yahwism would have been susceptible to the polytheistic environment. Lang has noted that there was no straightforward path towards the formation of Yahwistic monotheism at its early stages.[2] Petersen also suggests that an interpretive model of devolution should be added to make the analysis of the development of Israelite religion more sophisticated.[3] Thus, the formation and institutionalisation of Yahwism cannot be separated from political manipulation and intellectual development in Israelite society. Accordingly, the interpretation of the development of an ancient religion cannot be uniformly described as linearly progressive. A spiral model, therefore, would be more appropriate to contain those irregular, even contradictory elements in formation of Israelite religion. Our discussion is thus concerned mainly with the *factors* of development instead of the *model* itself; and our focus will be the

[1] Gnuse, *No Other Gods*; 134-53.
[2] Lang, *Monotheism and the Prophetic Minority*, 33.
[3] Petersen, "Israel and Monotheism," 93.

formation of the constitution of Yahwistic kingship in relation to the theocratic system perceived in the Torah.

In spite of scholarly controversies, it is generally agreed that Yahweh had a special status as the national god of Israel just as every nation had its patron god in the ancient Near East. As Haddad was the chief deity of the Arameans, Baal of the Phoenicians, Dagan of the Philistines, Milcom of the Ammonites, Chemosh of the Moabites, Qaus of the Edomites, so Yahweh was the chief deity of the Judeans and Israelites and later also of the Samaritans.[1] The reconstruction of early Israelite religion indicates that while Yahweh was not a Canaanite god in origin, he became equated with the supreme Canaanite god El and also appropriated El's wife Asherah and the seventy sons of El in Israel. In the same way, Yahweh was also equated with Baal and came to appropriate his consorts Anat and Astarte and some of Baal's attributes.[2] Yahweh was thus venerated in those prestigious sanctuaries with existing high gods and early Israelite religion was characterised largely by syncretism rather than as monolatry claimed or persuaded in the DtrH.[3] It seems that the establishment of the cult of Yahweh in Israel was more likely to be equated with these existing high gods in Canaan at its early stage, rather than assimilating the names and characters of other high deities into Yahweh as reflected in the Torah, or representing the combination of a couple of deities in the henotheistic cult in ancient Egypt.

While the actual establishment of the centrality of Yahweh cannot be traced in the historical reconstruction of early Israelite religion, the centrality of Yahweh in state religion seemed to be emphasised in the North in line with the establishment of the northern statehood. Mettinger has noted that the cultic politics of Jeroboam I were formed in deliberate competition with Jerusalem, and his intention was to provide a convincing alternative to the Solomonic temple in Jerusalem.[4] Toews'

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[1] Liverani, *Israel's History and the History of Israel*, 142.

[2] John Day, "Yahweh and the gods and goddesses of Canaan," in Ein Gott allein?: JHWH-Verehrung und biblischer Monotheismus im Kontext der Israelitischen und altorientalischen Religiousgeschichte (ed. Walter Dietrich and Martin A. Klopfenstein; Göttingen: Vandenhoeck und Ruprecht, 1994), 181-193; L. K. Handy, "Dissenting Deities or Obedient Angels: Divine Hierarchies in Ugarit and the Bible," *BR* 35 (1990): 18-35; D. N. Freedman, "Divine Names and Titles in Early Hebrew Poetry," in *Magnalia Dei, The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al; Garden City, New York: Doubleday, 1976), 55-107.

[3] See Morton Smith, *Palestinian Parties and Politics that Shaped the Old Testament* (2nd ed; London: SCM Press, 1987), 11-42; G. W. Ahlström, *Aspects of Syncretism in Israelite Religion* (trans. E. J. Sharp, HS 5; Lund: C.W.K. Gleerup, 1963), 9-88.

[4] T. N. D. Mettinger points out that the bull image should be seen as analogous to the empty cherub throne in the Jerusalem temple rather than as a direct symbol of Yahweh. Since the bull was the pedestal animal of both El and Baal in the iconic art of the ancient Near East, the cult of Yahweh in

analysis also suggests that, rather than introducing something innovative into the state cult, various religious initiatives undertaken by King Jeroboam I in fact enhanced the prestige of the established cult of Yahweh in the newly-formed monarchy.[1] The installation of two newly-made golden bulls in the sanctuaries can be seen as the exhibition of a well-known iconography in the ancient Near Easten tradition rather than as religious deviation.[2] Moreover, the establishment of the administrative centre in Shechem (1 Kgs 12:25) and the adoption of the old and venerable shrines of Bethel and Dan as royal sanctuaries all signify royal respect for well-established traditions.[3] While the king might have expelled certain pro-Davidic priests, the existing priestly system and personnel were largely maintained as an established institution. By commemorating the same historical tradition of the Exodus as in Jerusalem, the king could have celebrated and elevated Yahweh's chief position as well as his own kingship, legitimated by Prophet Ahijah (1 Kgs 11:29-39).[4] Thus, Yahweh's cult established in the northern monarchy in effect manifested the traditions prevalent in the ancient Near East and established in the united monarchy.

It is likely, therefore, that as an alternative to the state cult established in Jerusalem, the re-organisation of the state cult under King Jeroboam was to establish the centrality of Yahweh in the northern monarchy, rather than to constitute a new cult which would have risked losing general support from the religious elite and from the populace. The Deuteronomistic accusation of the unorthodoxy of the northern cult thus should be seen as a late theological reflection when Yahweh's tradition was radically developed into a new conceptual and cultic form. It seems, therefore, as Liverani has concluded, that the identification of the role of a state god only came into being with the development of statehood and ethnic awareness of political identity, and that the common ideology of the ninth-eighth centuries took shape with

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the North is thus believed to be Yahweh-El originally and to have become associated with Baal in the course of time. See his "The Veto on Images and the Aniconic God in Ancient Israel," in *Religious Symbols and their Functions* (Uppsala: Almqvist & Wiksell, 1979), 20-23.

[1] Toews, *Monarchy and Religious Institution*, 23-39.

[2] For the interpretation of the bull and the function of these shrines, further see also M. Haran, *Temples and Temple-Service in Ancient Israel: An Inquiry into the Character of Cult Phenomena and the Historical Setting of the Priestly School* (Oxford: Clarendon Press, 1978), 28-29, and n.28.

[3] For the relationship between the state and state cult, see Ahlström, *Royal Administration*, 56-62.

[4] Toews, *Monarchy and Religious Institution*, 41-107.

the recognition of the existence of different deities, while giving the national deity a privileged role in relation to the national fate and the kingship of the dynasty. [1]

2. The Cultic forms of Israelite Religion

The centrality of the state cult did not have to be expressed in a single god and single central shrine as regulated in the DL, but could have been manifested in different ways. Based on intensive analysis, John Day suggests that Yahweh was very much the chief god in ancient Israel, and the other gods and goddesses would have been worshipped as part of his pantheon.[2] Admittedly, while the royal temple might have a central place dedicated to Yahweh, other older prestige shrines could have been in continual operation with the worship of other gods and goddesses, and new shrines might also have been erected at some fortified towns with the extension of state administration (1 Kgs 11:5-8; 2 Kings 23:4-15).[3] Presumably, the cult of Yahweh was gradually constituted on different political and geographical levels in line with its political and religious centrality. On the national level, the king would be responsible for maintaining the state cult according to the common concept of kingship in the ancient Near East (see chapter 3, A). Apart from the temple in Jerusalem, the HW alludes to a dozen other cultic sites possibly existing in Palestine even though, as Haran has noted, individual shrines or temples might have experienced prosperity and decline at different times.[4] On the regional level, shrines might have been built in various fortified towns in connection with state administration and priestly personnel appointed by the king. [5]

The frequently mentioned "high place" as a cultic institution in DtrH might include those regional shrines which were less honoured than state temples.[6] Based

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[1] Liverani, *Israel's History and the History of Israel*, 140-42.
[2] Day, *Yahweh and the Gods and Goddesses of Canaan*, 228.
[3] Y. Aharoni, "The Solomonic Temple, the Tabernacle and the Arad Sanctuary," in *Orient and Occident: Essays Presented to Cyrus H. Gordon on the Occasion of his Sixty-fifth Birthday* (ed. Harry A. Hoffner, AOAT 22; Kevelaer: Butzon & Bercker; Neukirchen-Vluyn: Neukirchener Verlag, 1973), 1-8.
[4] M. Haran, *Temples and Temple-Service*, 26-40.
[5] Ahlström suggests that those priestly personnel dealt with administrative affairs as well as their cultic duty and the building of these shrines might not be as a house in the form of a temple, or an altar, but as a component of the administrative complex. See his *Royal Administration*, 27-43.
[6] While M. Haran considers "high place" as a relatively large altar and Evens sees it as a provincial shrine, Biran does not think that it can be identified with an altar since other activities could have also taken place apart from sacrifices. See M. Haran, *Temples and Temple-Service*, 18- 25; C. D. Evans, "Cult Image, Royal Policies and the Origins of Aniconism," in *The Pitcher is Broken: Memorial*

on the study of the material remains of the cult, Dever has surmised that regional cult sites appear to have flourished at places such as Dan, Megiddo, Ta'anach, Tell el-Far'ah, Lachish, Arad and Beersheva during the monarchic period.[1] However, the popular cultic practices, as Dever has noted, could have shared a great deal in common with official religion in spite of being unorthodox, non-institutional and non-authoritarian without conformist expression, since they attempted to secure the same benefits as any other religion.[2] On the local level, ordinary individuals could have enjoyed tremendous freedom to form their own ways of worship at their own houses and everywhere in the countryside without restriction. The places, such as high places *bāmôt*, stone steles, *maṣṣēbôt*, and tree trunks, *'ăšērot/'ăšērîm,* frequently mentioned as unorthodox worship in the HW, might have reflected a popular folk cult.[3] Albertz describes this type of cult as domestic practice and believes that personal piety would have been nurtured by it, especially in times of crisis, thereby providing dynamics for the development of state religion during the exilic period.[4] However, in spite of the spiritual aspect of the folk religion, the growth and development of local unofficial cults could also have posed financial, theological and even political threats to the state religion when state authority could not bring various religious practices under control.

In this context, various religious beliefs might have co-existed and mixed in society within different groups without political and conceptual clarification between the official cult, folk religious practice, prophetic beliefs and Yahwism. The complexity and diversity of Israelite religion in Iron Age Israel, as Mark Smith has concluded, comprised not only a number of deities, but also a variety of religious practices and cultic models.[5] In this context, without powerful sponsorship, the

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Essays for Gösta W. Ahlström (ed. S. W. Holloway and L. K. Handy; Sheffield: Sheffield Academic Press, 1995), 192-212; and A. Biran, "'To the God who is in Dan,'" in *Temples and High Places in Biblical Times*: *Proceedings of the Colloquium in Honor of the Centennial of Hebrew Union College-Jewish Institute of Religion, Jerusalem, 14-16 March 1977* (ed. Avraham Biran; Jerusalem: Hebrew Union College, 1981), 142-51.

[1] See W. G. Dever, "Ancient Israelite Religion: How to Reconcile the Differing Textual and Artifactual Portraits" in *Ein Gott allein?*, 108-10; David Ussishkin, "The Newly Discovered Late Bronze Age Temple at Tel Lachish" in *Temples and High Places in Biblical Times*, 118-119. For Archaeological evidence and interpretation, see Zeev Herzog, "Israelite Sanctuaries at Arad and Beer-Sheba," in *Temples and High Places in Biblical Times*, 120-22.

[2] Dever, "Ancient Israelite Religion," 114-15.

[3] Ibid., 115.

[4] Albertz, *A History of Israelite Religion in the Old Testament Period*, *Volume I,* 94-103. *Volume II*, 399-411.

[5] M. S. Smith, "Yahweh and Other Deities in Ancient Israel: Observations on Old Problems and Recent Trends," in *Ein Gott allein?*, 197-234.

diverse religious practices could not have been brought to a well-regulated single god with a single cult as defined in the Torah. By distinguishing local and family religions from state ones, Albertz suggests that personal piety played an essential role for the revolutionary development of Yahwism in the later monarchy period and onward.[1] However, unless the impact of individual piety and loyalty to Yahweh reached into the political sphere culminating in a powerful conceptual expression, the old frame of state religion would have remained unchanged. Thus, in spite of the probability of the establishment of the centrality of Yahweh's cult in early monarchy, there is nothing in this situation to explain the rise of a more centralised, theocratic monolatry, and so we must look to the events of the later monarchy to explain that unusual development.

C. The Awakening of Nationalism

Given that there is no evidence indicating any radical cultic and conceptual changes made in the early monarchy, the formation of Yahwism should be better understood in the light of national crises and social conflicts in Israel, as suggested by G. Theissen.[2] The HW suggests in many ways that the emergence of Yahwism was in direct connection with classical prophetic teachings and royally sponsored religious reforms. The early movement of Yahwism, as indicated in the DtrH could have begun in the ninth-century by Prophet Elijah and Elisha in the northern monarchy, and royal reform for eliminating idolatrous worship in the southern monarchy by King Asa and his son Jehoshaphat.[3] However, we should be cautious about common features of Deuteronomistic historiography imposed on these narratives, while tracing the early trend of Yahwism from these texts for the reconstruction.

The prophets in the North appear rather active during the ninth and eighth centuries. They seemed to have a strong political influence on their kings as is often

[1] Albertz, *A History of Israelite Religion, Volume II*, 399-426.
[2] Gerd Theissen, *Biblical Faith: An Evolutionary Approach* (trans. J. Bowden; London: SCM Press, 1984), 51-63; trans. of *Biblische Glaube in evolutionärer Sicht* (Munich: Christian Kaiser Verlag, 1984).
[3] Lang, *Monotheism and the Prophetic Minority*, 13-59.

found in the ancient Near East.[1] Certainly, a prophetic role was not limited to the cultic or religious sphere as emphasised in the DtrH, but could also be actively involved in making remarks on, or intervening in, social and political affairs. However, a number of scholars have particularly noted that prophetic activities in Israel were largely at the level of personal intervention in expressing divine approval or censure, rather than of systematic consultation for political decision-making as a component of state governance.[2]

In this context, the religious conflict between the prophets of Yahweh and the priests of Baal in Ahab's reign described in the DtrH cannot be taken at face value. Liverani points out that a religious pluralism existed throughout Israel at that time and that Baal did not need to be "imported" by Queen Jezebel, a princess of Tyre, but was already worshipped in Israel as a traditional god of the countryside along with the goddesses Astarte and Asherah. This can be seen from the fact that the sons of Ahab and of the Baalist Jezebel are the first kings of Israel in the HW to bear Yahwistic names. Thus, rather than introducing a new religion into Israel, the dynastic marriages and international relationships simply promoted the prestigious cult of a foreign god in Israel, which could not have posed a real threat to the chief position of the national god, Yahweh, but would have created cultural pluralism, thereby distracting attention from the cult and values established by Yahwism.[3] Indeed, as Ahlström has noted, the DtrH in effect indicates the dominance of foreign Baal worship in both monarchies: King Ahab had a temple to Baal built in Samaria (1 Kgs 15:31-32), and his daughter, the Omrid queen of Judah, had a Baal temple in Jerusalem (2 Kgs 11:18; 2 Chr 23:17); both temples appear to be dedicated to the foreign god of a foreign queen.[4]

In the context that a deity was traditionally associated with a particular territory and people in the ancient Near East, and that Yahweh appeared to be tied to the people of Israel and their land in Palestine,[5] a foreign god would have been

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[1] Such as advising royal military activities, and the choice of a successor to the throne, or inciting a coup, reprimanding a king's improper behaviour, or resolving or intensifying social and religious conflicts. See Liverani, *Israel's History and the History of Israel*, 116-19. For a general review of prophecy in the ancient Near East see Benjamin Uffenheimer, *Early Prophecy in Israel* (Jerusalem: The Magnes Press, 1999), 15-88.

[2] Liverani, ibid.,139; Also Albertz, "Social History of Ancient Israel," 360-63.

[3] Liverani, ibid., 119-120.

[4] G. W. Ahlström, "King Jehu—A Prophet's Mistake," in *Scripture in History & Theology: Essays in Honor of J.Coert Rylaarsdam* (Pennsylvania, Pittsburgh: The Pickwick Press, 1977), 52-54.

[5] Morton Smith, *Palestinian Parties and Politics that Shaped the Old Testament* (London: SCM Press, 1987), 17-19.

welcomed as a guest in a polytheistic world. This did not mean that a foreign deity was welcome to settle in the territory as a superior rival of its national god which would have been conceptually and politically unacceptable.[1]

However, the conflict between the newly-developed royal power and the well-established traditions seems to be demonstrated in different dimensions. The conflict over Naboth's vineyard which describes how an innocent Israelite was murdered by the conspiracy of Queen Jezebel in the DtrH (1 Kgs 21:1-29) suggests the different values held between native Israelites and the powerful foreign Queen. Naboth refused King Ahab's request for his vineyard because of his respect for the established tradition;[2] the foreign Queen, on the other hand, upheld a different concept of kingship and ruthlessly took both Naboth's life and vineyard through manipulating court procedure. Although the text may have had different interpretations at different compositional stages,[3] it cannot be denied that the narrative reflects the outgrowth of royal power under the influence of the foreign Queen, and the consequent decline and even loss of traditional values in the social development and the establishment of international relationship in the northern monarchy (see chapter 1. C).[4] In this context, Prophet Elijah, whose name is an indication of the equality or combination of El and Yahweh, felt the urge in the escalating conflicts to define and promote Israel's own values in relation to Yahweh's chief position in state politics, in order to awaken the nation to resist the encroachment of foreign values and cultures.

Apparently, the political and religious movement reached its second wave in the revolution of Jehu with the support of Prophet Elisha. In the name of Yahweh, Jehu launched a bloody massacre of the worshippers of Baal and of the whole royal family, and thereby took the throne from Ahab's family (2 Kgs 9:1-10:35).[5] His zeal for Yahweh, however, is rather questionable. Ahlström points out that Jehu's

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[1] Ibid., 21-22.

[2] For the discussion of legal culture in the ninth century reflected in Naboth's case, see A. Rofé, "Methodological Aspects of the Study of Biblical Law," in *Jewish Law Association Studies II: The Jerusalem Conference Volume* (ed. B. S. Jackson; Atlanta: Scholars Press, 1986), 5-7.

[3] For the interpretation of the formation of the text, see A. Rofé, "The Vineyard of Naboth: The Origin and Message of the Story," *VT* 38 (1988): 89-104.

[4] Albertz points out that the existing social conflict was being coincidently aggravated by the manifestation of foreign religions, thereby provoking conservative opposition to the official Yahweh-Baal syncretism in Omrid dynasty. See his "Social History of Ancient Israel," 362.

[5] For a historical reconstruction of Jehu's reign in the light of the Mesh and Tel Dan steles, see A. Lemaire, "West Semitic Inscriptions and Nine-Century BCE Ancient Israel," in *Understanding the History of Ancient Israel* (ed. H. G. M. Williamson, PBA 143; Oxford: Oxford University Press, 2005), 279-303.

revolution was in effect totally motivated by his political ambitions, particularly his dissatisfaction with Omrid's international policy that was evidently reversed later by Jehu's pro-Assyrian policy. And it was because of sharing a similar political stand rather than approving his brutality, that the prophet Elisha lent his support and legitimised his kingship.[1] The royal family and their supporters among the Baal adherents were thus their first and last enemies (2 Kgs 10:11-17).[2] Accordingly, the brutal and instantaneous eradication of Ahab's whole family and the Baal worshippers in the military coup (2 Kgs 10:18-28) should be seen as a desperate measure taken by the minority of Jehu's rebels who attempted to gain control of the situation immediately.[3] Thus, the emphasis on the superiority of the national god was the political and ideological weapon for the coup to overturn royal power at that time, and was further interpreted as a fight for the exclusiveness of Yahweh in order to justify the new regime. The claim and the emphasis on the uniqueness of Yahweh could have been launched again whenever it suited a political scheme in later times.

The socio-political situation in the South evidently remained relatively stable and undisturbed.[4] The destruction of the power of the Omrid queen Athaliah and the subsequent destruction of the institution of the Phoenician Baal cult in the southern monarchy (2 Kgs 9:27-28; 11:20) manifests the direct correlation between political power and state cult in general, and the strong Davidic tradition established and sustained in the southern monarchy in particular. It suggests that the establishment of a dynastic cult was closely related to its royal patronage, and the collapse of a certain political regime could have subsequently led to the removal of its cult. In either case, the position of Yahweh seems to be enhanced in these political battles by the increasing awareness of national interest and identity.

Thus, the elevation of the centrality of Yahweh in the nationalist movements seems to meet the political demands of the time in which religious interests converged with other social interests. No further evidence can suggest that the political movements were ever involved in fundamental conceptual revolution other

[1] Later the prophet Hosea seems to have exhibited sensitivity against violence and bloodshed (Hos 4:2; 6:7-9). See H. G. M. Williamson, "Jezreel in the Biblical Texts," *TA* 18 (1991): 72-89.
[2] Morton Smith points out that while the Phoenician Baal was supported by Queen Jezebel, the adherents of the cult were mostly supporters of the royal house of Ahab. See his *Palestinian Parties and Politics*, 25-26.
[3] Ahlström, "King Jehu—A Prophet's Mistake," 47-61.
[4] The conclusion is based on two elements: the geographical marginality of Judah made the South less exposed to foreign influences and the origin of Yahweh seemed from the South in biblical sources (Exod 19, Jug 5:4). See Liverani, *Israel's History and the History of Israel*, 139-40.

than expressing its interest in traditional values. In spite of this, the trend of Yahwism could have led to the reinforcing of its ideological and political foundation at that time, which could have been picked up and developed by later Yahwistic politicians when confronting new challenges to society.

D. Prophetic Teachings in the Eighth Century

Prophetic activities in the eighth century and how they apparently influenced their contemporary societies cannot be reconstructed from the prophetic work reformulated in the HW. However, prophetic work concerning the destruction of the northern monarchy may have, indeed, reflected the original prophetic warnings about, or comments on, the destruction of the North on the one hand, and southern adoption of the message at the end of the Jedean monarchy on the other, in order to serve as a dire warning to the southerners. By highlighting the fatal social problems as they occurred in the northern monarchy, the Judean elite who were responsible for the composition intended to solve their own problems. Thus, a reading of the prophetic literature can be clarified by southern circumstances as well as by northern. Our primary concern is the central message in these prophetic books in relation to the imminent destruction of the northern monarchy, which might have had an impact on later royal policy-making in the southern monarchy.

1. The Call for Loyalty towards the National Deity

In spite of later redactions, the central message of the book of Hosea calls Israel to return to Yahweh with full allegiance. It proclaims the imminent fall of the nation as the consequence of the full acceptance of political and religious infiltration from Assyria, which undermined the religious and moral foundations of the nation. Apart from the alignment with Assyria, Hosea also ridiculed the Israelite alliance with Egypt and with other nations in general (Hos 7:8, 11; 8:8, 10; 12:1). It seems that the prophet was mainly concerned with national independence, rather than political preference in foreign policy as in Jehu's revolution. The relationships with these political alliances is described as sexual promiscuity in the book (8:9), which is

understood to be the cause for taking away the nation's devotion and allegiance towards the national god Yahweh (7:3). Although no evidence suggests that Neo-Assyria ever promoted its state religion in these vassal nations, [1] it is possible that these nations would have voluntarily given a place to the foreign religions and cultures (see chapter 4.A). This can be seen from King Manasseh's foreign policies which led to a flourishing of polytheism in the Judean monarchy.[2]

Toews has particularly noted that the crises Israel endured during the last three decades prior to 722 BCE could have exacerbated social inequities and oppression. The tribute paid to the Assyrian empire could only have come through oppressive taxation (12:1). Conscripts for the army must also have been forcibly drawn from the peasants on their arable farms. Social relationships were thereby broken and people became hostile and violent towards one another. Accordingly, crimes such as dishonesty, stealing, robbery, adultery and murder may have dramatically increased (4:1-2; 6:8-10).[3] The ramifications of these foreign alliances are thus seen as totally unacceptable to the worship of Yahweh, and as undermining Israel's allegiance to the national god Yahweh and to its values on a national scale. Since ancient society, as Morton Smith points out, was united by common interest, language, traditions, and common religious feelings,[4] the breaking of the common ties would have inevitably led to the wide-ranging disintegration of society.

As a part of the deteriorating society, Hosea would have been deeply aware of these underlying social problems. The political alliances established with so many foreign nations are seen as a political replacement of the trust in Yahweh. Once the political independence of the nation was compromised, the nation was left open to all kinds of influences, and thereby deteriorated in every aspect of national life. In this context, people would seek their own interests more than the will of Yahweh, and the religious life of the nation, in Hosea's eye, became empty and meaningless in spite of seemingly active participation in cultic activities. Thus, the prophet distinguished genuine love and deep trust *in* Yahweh from outward religious duties *for* Yahweh (6:6), and called for inner devotion and true understanding of the national god. The prophet did not totally deny the religious functions represented by these altars,

[1] M. Cogan, *Imperialism and Religion: Assyria, Judah and Israel in the Eighth and Seventh Centuries B.C.E* (Missoula: Scholar press, 1974), 42-48; and J. McKay, *Religion in Judah under Assyrians* (SBT 2nd series 26; London: SCM, 1973), 1-73.
[2] Cogan, *Imperialism and Religion,* 88.
[3] Toews, *Monarchy and Religious Institution in Israel*, 166.
[4] Morton, *Palestinian Parties and Politics that Shaped the Old Testament*, 13.

pillars, sanctuaries, and even various gods; but pointed out that these visible and material matters had distracted the nation from seeking the true source of the sustaining gifts it received (14:5).[1] Thus Hosea's call for allegiance towards Yahweh would have illuminated the centrality of Yahweh in the increasing political and religious pluralism of the nation.

Such impressive emphasis of the centrality and incompatibility of Yahweh, however, would not have meant that the concept of Yahweh developed to the level manifested in the Torah and in the late prophetic literature. Hosea's call for returning to and concentrating on the ancestor god Yahweh might have lead to the development of the concept in Israel in relation to its relations to other nations and their deities. Sweeney has pointed out that Hosea's critique of the northern monarchy for the failure of its religious leaders and kings, and its alliance with Assyria would be relevant to the southern monarchy when it confronted a similar political situation.[2] The emphasis on spontaneous, undivided devotion to Yahweh could have led to the disregard of the material and external manifestations of Yahweh and subsequently conceptual development of Yahwism in later Judean society. Evidently, Hosea's message as the sole work from the circle of northern prophets in the HW is apparently echoed by other prophetic messages in his southern counterparts, which also demand allegiance and trust in Yahweh alone in times of national crisis (Isa 7:1-17; 20:1-5; 31:1-3; Jer 2:17-18; Ezek 23:; 16:23-29).

2. The Cry for Social Justice and Humanity

The great contribution of the prophetic message was not limited to religious issues, but was deeply involved in the socio-political life of the nation. The importance of social justice and humaneness seems to be well recognised in ancient times as directly related to the stability and prosperity of society. When Israelite kings failed to fulfil their divinely assigned responsibilities of establishing just governance and beneficial care for the underprivileged (see chapter 3.A and B), certain insightful individuals would have stood up and cried out the heart of the people. Amos seems to be one of them who did not belong to, or have any

[1] For the interpretation of these iconographies, see Toews, *Monarchy and Religious Institution in Israel*, 145-72.
[2] Sweeney, *King Josiah of Judah*, 272.

connection with, prophetic circles, but was an ordinary man who profoundly witnessed social injustice and brutality upon those oppressed peoples (Amos 1). His condemnation reflected economic development and increasing social disparity under the monarchical system on the one hand, and social and moral deterioration in the northern monarchy on the other.[1] For Amos, *mishpat* and *tsedaqa* which underlined socio-judicial justice had totally collapsed in Israel (5:7). No institutional monitor set out to inspect economic and social exploitation and no legal redress could be obtained by the poor and oppressed (5:11-12). Accordingly, the extravagant religious practices of the ruling and wealthy classes were seen by the prophet as an object of ridicule (4:4-5; 5:21-24), while those people's consciousness and behaviour were neither ruled by the existing laws nor by human compassion (4:1-5; 5:1-7).

Many scholars thereby connect prophetic teaching with the written law in Israel and various suggestions are offered as to the law in Amos' time.[2] However, prophetic teaching is not only concerned with judicial justice executed in the courts, but more with general humanity and the common values which sustained society. Although the northern monarchy might have its own laws made by certain powerful kings (see chapter 4.B), the laws could have only functioned as part of judicial criteria in the courts whereas the society would still have been more or less ruled by customary rules and by a common sense of right and wrong. The constitutional concept of law and systematisation of written law on the scale exhibited in the Torah could possibly have occurred only after the death of King Josiah (see chapter 4.E.1). The direct connection of the prophetic condemnation of social injustice with the corresponding laws presented in any part of the Torah would be improper, as pointed out by a number of scholars.[3] Accordingly, the correlation between the original prophetic teaching and the relevant laws in the Torah should be understood in its socio-historical context, rather than in the similarities of comparable texts.

In any case, the concept of justice could have been recognised as fundamental in maintaining social order in any ancient society. Tucker points out that Amos would

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[1] For the review of the reconstruction of economic system in both monarchies, see Lowery, *The Reforming Kings*, 44-61.

[2] For the review of scholarship on this issue, see Anthony Philips, "Prophet and Law," in *Israel's Prophetic Tradition: Essays in Honour of Peter R. Ackroyd* (ed. Richard Coggins et al; Cambridge: Cambridge University Press, 1982), 217-20.

[3] G. M. Tucker, "The Prophets and the Prophetic Literature," in *The Hebrew Bible and its Modern Interpreters* (ed. D. A. Knight and G. M. Tucker; Philadelphia: Fortress Press, 1985), 326-331; also see Jonathan S. Greer, "A *Marzeah* and a *Mizraq*: A Prophet's Mêlée with Religious Diversity in Amos 6.4-7," *JSOT* 32 (2007): 243-262.

have been fully aware of the legal system established in the monarchy.[1] Philips has also noted that Amos's indictment is that beneath the outwardly prosperous and law-abiding society (4:1; 6:1-6) there lay morally, perhaps legally as well, the unjust treatment of the poor.[2] It seemed that while the system of law under the monarchical regime might have developed and gradually overtaken the customary rules in the court, the prophet appealed to the commonly held humaneness and righteousness for the redressing of the social and economic inequalities. Although such general social deterioration in a seemingly prosperous society might have been ignored by the ruling class, it could not have escaped the attention of the classical prophets.[3] It is reasonable that the classical prophets did not cite specific laws in their messages about the transgressions committed by the privileged classes, but placed their condemnation on the ground of commonly held values and the legal culture of that time. In this regard, certain monarchical laws and well-known social norms could have served as the underlying criteria for the prophetic condemnation of such evils as widespread judicial corruption, dishonesty in commercial transactions, selfishness and ruthlessness in depriving poor and marginalised groups of their very subsistence. Thus the original teaching seemed to be adopted in order to interpret the inevitability of the political destruction of the northern monarchy and to serve as a severe warning to the monarchy which remained.

Moreover, as religion was the foundation of society, the prophetic assessment of social injustice is also related to the common belief in divine blessings and sanctions (4:6-13; 5:8-27). Although religious aspects were not the main agenda of Amos' critique, his aggressive remarks on the cult could have damaged its function more than Hosea's approach. While Hosea drew a parallel analogy between marriage and the Israelite relationship with Yahweh, Amos made a stunning contrast between the cruelty of society and cultic extravagance (5:21-27). The celebration of religious festivals by the rich nobles (5:21-23) only added fuel to the resentment that Amos had for their ruthless exploitation and oppression of the deprived groups. He could not help but mock (6:1-6) and condemn them with the declaration of national destruction, in which they would be the first and worst victims (6:7-14). The

[1] R. E. Clements, *Prophecy and Tradition* (Oxford: Blackwell, 1975), 17-20.
[2] See Philips, "Prophet and Law," 220-32.
[3] For a general understanding of social justice in relation to the concept of national god in classical prophetic message, see Morris Silver, *Prophets and Markets: The Political Economy of Ancient Israel* (Boston; The Hague; London: Kluwe-Nijhoff, 1983), 123-38.

concluding cry for justice and righteousness would have made the message powerful to the southerners (5:24). Toews has thus concluded that Amos' censure of the cult grew out of his conviction that devotion to Yahweh entailed first and foremost the maintenance of social relationships built on loyalty, justice and righteousness, especially in favour of those who were disadvantaged in times of difficulty.[1]

The importance of true piety in direct relation to social justice and compassion is well articulated by, and echoed by, later prophetic work (Jer 7:5-6; Mic 3:9-12; Isa 32:1). This would have led to the development of the legal system in Israel and the convergence of law and religion in the Torah for the reconstitution of the broken nations. Later prophetic work seems to assign the task of dispensing justice and righteousness as individuals' virtuous realisation of social and legal goals (Ezek 18:7-8, 12-13, 16-17), and further placed the task on eschatological kingship (Ezek 45:9-10).[2]

E. Aniconic Movements in Royal Reforms

Another distinctive feature of Yahwism is defined in the Decalogue as polemic opposition to any iconic image of Yahweh, which seems to find a parallel in royal aniconic movements described in the DtrH.[3] However, recent study on this issue suggests that the express ban on Yahweh's images is a fairly late product and can only be found in literature from the period after 722 BCE.[4] Mettinger has noted several Hebrew texts which actually refer to the manufacturing of images in different forms in Israel (Jer 10:1-9; Isa 44:9-20; 30:22; 40:19; Judg 8:22-28; 17:4-5; Zech 10:2) in spite of the strong opposition to any iconic cult in the Torah and the DtrH.[5] The numerous male and female figurines excavated from Jerusalem and other sites in Judah also suggest that iconic worship existed in Israel at least until the end of the

[1] Toews, *Monarchy and Religious Institution in Israel*, 167.
[2] M. Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: The Magnes Press; Minneapolis: Fortress Press, 1995), 57-74.
[3] For a terminological discussion of aniconism, see T. N. D. Mettinger, *No Graven Image? Israelite Aniconism in its Ancient Near Eastern Context* (CBOTS 42; Stockholm: Almqvist & Wiksell, 1995), 18-27.
[4] Ibid., 135-97.
[5] T. N. D. Mettinger, "The Veto on Images and the Aniconic God in Ancient Israel," 15-16.

monarchy.[1] The question, therefore, is not about whether or not, but how to interpret the actual functions of these figurines and iconic objects in the Yahwstic cult: did they represent the image of Israelite gods or were they merely iconic objects in Yahweh's cult? Conservative interpretation, on the other hand, contends that the original cult of Yahweh had its imageless roots in early West Semitic cults,[2] and Yahweh was conceived in early Hebrew texts to sit unseen in royal majesty over the cherub throne and the ark footstool.[3] In spite of the possibility of early aniconic roots, Yahweh's cult could have scarcely taken on the character of a fixed prohibition as articulated in the Decalogue that in fact reflects and accentuates the transcendence of Yahweh at a very late stage (see chapter 4.D.3), as Mettinger himself has acknowledged.[4] The aniconic movements in the DtrH, therefore, cannot be taken as conceptually motivated reforms within Yahwism, but more likely as politically maintaining the orthodoxy of the state cult.[5]

King Asa appears as the first cult reformer in the HW (1 Kgs 15:9-24; 2 Chr14:2-16:14) who purged prostitution from the state cult (v.12), removed all the idols made by his ancestors (v.12) and destroyed the Asherah object made by his queen mother (v.13). Modern interpretation however reveals that the practices of iconic worship and cultic prostitution were common in the first temple in Judah.[6] The shocking image of Asherah made by the queen mother might indicate the commonness of iconic worship both in the North and the South, and the overdevelopment of iconic images during certain periods in particular. Evans suggests that it was social elements rather than theological thinking that influenced iconoclastic royal policies in Judah,[7] and that the occasional destruction of certain iconic images should be treated as an isolated phenomenon in a particular socio-political context. In this regard, he argues that the King's action should be considered

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[1] For a summary review and interpretation, see Ephraim Stern, "Religion in Palestine in the Assyrian and Persian Periods" in *The Crisis of Israelite Religion: Transformation of Religious Tradition in Exilic and Post-Exilic Times* (ed. Bob Becking, Marjo C.A. Korpel; Leiden & Boston & Köln: Brill, 1999), 250-53. For a review and analysis of the interpretation of these figurines, see Judith M. Hadley, *The Cult of Asherah in Ancient Israel and Judah: Evidence for a Hebrew Goddess* (University of Cambridge Oriental Publications 57; Cambridge: Cambridge University Press, 2000).

[2] T. N. D. Mettinger, "The Roots of Aniconism: An Israelite Phenomenon in Comparative Perspective," in *Congress Volume: Cambridge 1995* (Leiden, New York and Köln: Brill, 1997), 219-34.

[3] See Mettinger, "The Veto on Images and the Aniconic God in Ancient Israel," 20-21.

[4] Ibid., 25-27.

[5] See Ahlström, *Royal Administration*, 63-64.

[6] For a review and analysis of scholarship on this issue, see Lowery, *The Reforming Kings*, 88-99.

[7] C. D. Evans, "Cult Image, Royal Policies and the Origins of Aniconism," 210.

to be a fulfilment of his cultic role in general and to deal with the power of the queen in particular. Thus, rather than introducing a religious innovation, the removing of these unofficially installed personnel and images from the state temple was a part of the royal administration in maintaining the orthodoxy of the state cult.[1] Lowery also points out that Asa's reform was a small scale, internal political act, and the removal of the Asherah object was a symbolic act underlining the fall of the queen mother Maacah from power, just like Jehoiada destroying the Baal Temple and the Omrid queen Athaliah.[2]

Further, the DtrH, which praises King Asa as a king loyal to Yahweh because of his reform, by no means suggests that the king was a Yahwistic monotheist. In fact, being loyal to Yahweh was not necessarily related to iconoclasm prior to the emergence of monolatry. On the contrary, it generally meant that a king was responsible for honouring the state deity by maintaining its official cult. Thus, it was phenomenal that ancient kings might elevate a certain deity above all others, but never really isolated that deity from its divine peers. Correspondingly, the removal of Queen Maacah and her iconic objects might have reflected both the king's particular political agenda and his common cultic role in the state temple. This royal iconoclasm, however, could serve as a precedent for later policy-making when it suited. It seems, therefore, that only in the hands of Deuteronomistic redactors did these occasional iconoclasms become an inseparable part of Yahwism as conceptual propaganda.

F. The Contribution of Hezekiah's Reform

The breakthrough of Yahwism is pragmatically associated with cultic centralisation made by King Hezekiah (728-698) in the DtrH. Early interpretation of the narrative was generally concerned with theological or economic aspects of the

[1] Ibid., 192-93. Evans summarises that a part of king's role was engaged in cultic organisation or reorganisation, and removing or destroying temples and images can be seen as their cultic programmes.
[2] Lowery, *The Reforming Kings*, 98-99.

reform. This approach, however, was abandoned in later discussion,[1] and a religio-political model was perceived to interpret the movement.[2] Nicholson considers the reform as a trend towards national independence and places it in the international context in direct relation to the ebb and flow of Assyrian power. Judah is believed to have had its first opportunity to get rid of the Assyrian yoke in 705 BCE when Sargon died and widespread rebellion followed throughout the vast empire on the accession of his successor Sennacherib.[3] However, when Sennacherib had regained the upper hand by 701 BCE, Judah was devastated by heavy tribute and the policy of population deportation in the aftermath of the crucial battle with the Assyrians in summer 701.[4] All sorts of foreign cults then set foot again on Judean soil and thus consequently weakened the nation politically, economically and culturally. Cultic centralisation by King Hezekiah is thus placed after the 701 battle when the king abolished these high places in order to concentrate the worship of Yahweh alone in Jerusalem. The reform is thus understood to be motivated by both political ambition for national independence and by loyalty towards the national god Yahweh after the defeat.

Halpern, on the other hand, interprets the reform as an attempt at national self-assertion in general and associates it with military preparation for the revolt in 705 in particular.[5] He understands that in order to mount a successful revolt, the king abandoned the conventional strategy of field force and adopted a new defence system: a "static, hedgehog defence" which concentrated force in fortified cities and left the enemy the unfortified countryside.[6] Strengthening the established forts and militarising the population therefore would have been crucial in this new strategy; and the king would have forced the rural population to abandon their ancestral land and herded them into military points. The rural cult, represented by the high places and the ancestral shrines, thus became expendable in the interests of urgent military

[1] See the review by C. D. Evans, "Judah's Foreign Policy from Hezekiah to Josiah," in *Scripture in Context* (ed. C. D. Evans et al; Pittsburgh: Pickwick, 1980), 157-58; for a recent review, see Edelman, "Hezekiah's Alleged Cultic Centralization," 424-29.
[2] E. Nicholson, "The Centralisation of the Cult in Deuteronomy," *VT* 13 (1963): 380-84.
[3] Ibid., 385.
[4] Also see W. R. Gallagher, *Sennacherib's Campaign to Judah: New Studies* (SHCANE 18; Leiden: E. J. Brill, 1999), 263-74.
[5] B. Halpern, "Jerusalem and the Lineages in the Seventh Century BCE: Kingship and the Rise of Individual Moral Liability" in *Law and Ideology in Monarchic Israel* (ed. B. Halpern and D.W. Hobson, JSOTSup 124; Sheffield: Sheffield Academic Press, 1991), 11-107.
[6] Ibid., 18-27.

urbanisation.[1] Thus, by severing the old ancestral and customary ties to the land, the king could have secured the committed co-operation of individual families to the central power.[2] In line with this militarily movement, the administrative system would have been restructured and political propaganda for the scheme would also have been initiated. As a result, cultic centralisation as a part of military and administrative centralisation had its ideological justification in royally sponsored literary composition.

Halpern's reconstruction seems quite convincing as a whole. In spite of this, a religious role in the movement cannot be simply dismissed as Nicholson has noted, especially the religiosity originated by the battle with Sennacherib in 701 (688) BCE. This, however, did not have to find its expression in cultic centralisation as suggested by Nicholson. In fact, Na'aman has noted that Hezekiah in the book of Jeremiah (26:) serves as the model of true repentance, rather than as a model of cultic reform as in the DtrH. Jerusalem was saved because of the king's willingness to heed the prophet's word and thereby beseech Yahweh (19).[3] The interpretation evidently finds an echo in the detailed and theologically structured account of the event in the book of Isaiah (36:1-37:35), where no hint is given as to the association between cultic centralisation and divine salvation of the city of Jerusalem. It shows a negative impact posed by cultic centralisation, as articulated by the Assyrian commander Rabshakeh (36:7), who plainly interpreted the removal of the high places and altars as an act of violation of, rather than of veneration of, the state deity.[4] Thus, while the Assyrian annals say that Hezekiah eventually surrendered to Assyrians,[5] the

[1] Ibid., 26-27.
[2] Halpern notes how the continuity between generations in Israel was broken and vanished in the reforms of Hezekiah and Sennacherib. Ibid, 28-59, 69-77.
[3] Nadav Na'aman, "The Debated Historicity of Hezekiah's Reform in the Light of Historical and Archaeological Research," *ZAW* 107 (1995): 183-84. For the discussion of the interrelation between two texts, see K. A. D. Smelik, "Distortion of Old Testament Prophecy: the Purpose of Isaiah xxxvi," in *Cries and Perspectives: Studies in Ancient Near Eastern Polytheism, Biblical Theology, Palestinian Archaeology and Intertestamental Literature* (Leiden, 1986), 70-93; and C. R. Seitz, *Zion's Final Destiny: The Development of the Book of Isaiah—A Reassessment of Isaiah 36-39* (Minneapolis, 1991). They suggest that the narrative in Isaiah was not transferred to its present setting from 2 Kings 18-20. On the other hand, a number of scholars, represented by H. G. M. Williamson, contend for vice versa. See Williamson, "Hezekiah and the Temple," in *Texts, Temples, and Traditions: A Tribute to Menahem Haran* (ed. M. V. Fox et al; Winona Lake, Indiana: Eisenbrauns, 1996), 47-52; and his, "In Search of the Pre-Exilic Isaiah," in *In Search of Pre-Exilic Israel* (ed. J. Day; JSOTS 406; London and New York: T & T Clark International, 2004), 181-206.
[4] Ahlström considers Hezekiah's removal of *bāmôt* as a disastrous move since it would conceptually diminish Yahweh's power and consequently the power of the nation. See his *Royal Administration*, 67.
[5] For the Assyrian account of the campaign, see Rogerson, *Chronicle of the Old Testament Kings*, 141.

subsequent withdrawal of the Assyrian army and the survival of Jerusalem were then interpreted otherwise in the Deuteronomistic interpretation of the events.

Moreover, archaeological evidence shows that the king at least left standing shrines at Lachish and at Arad, and spared Ahaz's altar and a good deal of Judahite iconography.[1] The Deuteronomistic claim of a single legitimate cult in relation to the concept of the exclusiveness of Yahwism in the national reform would have been irrelevant to the actual reform undertook by King Hezekiah.[2] However, in spite of this trend of conceptual antedating in the DtrH, total allegiance to and alliance with the state deity in times of catastrophe would have been highly probable, especially in the circumstances that the rural area was devastated, the majority of fortified cities were taken, and Jerusalem was under a long and severe siege. Yahweh could have been highly venerated as the state god and his cult would have been unprecedentedly elevated at most critical times. This type of monolatry movement can be defined as "temporary monolatry", or as "temporary henothesim",[3] but cannot be interpreted as evidence of the formation of the concept of the exclusiveness of Yahweh. Thus, it would be likely that it was the centrality of Yahweh, rather than a centralised cult, that was promoted by the regime.

Most important is that the movement could have elevated the political position of those Yahwists, which in turn could have led to the conceptual and political development of Yahwism at the end of the Judean monarchy. Halpern suggests that Hezekiah's prophet who used the fate of the northern monarchy as an example of Yahweh's judgement could also have interpreted the marauding of Sennacherib as Yahweh's judgment on the rural cult, thereby justifying cultic centralisation and the suppression of foreign cults in the realm.[4] Thus religious innovation which was once a by-product of militarisation became officially recognised ideology. The significance of Hezekiah's reform to the development of Yahwism, therefore, would not have been the nationalist movement itself, but the allowance for the rise of Yahwists as a political entity in the monarchy and the consequential intellectual outcome for the orientation of Yahwism in later time.

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[1] Halpern, "Jerusalem and the Lineages," 66-69.
[2] Diana Edelman, "Hezekiah's Alleged Cultic Centralization," *JSOT* 32 (2008): 395-434.
[3] Lang, *Monotheism and the Prophetic Minority*, 33-36. For terminological differences between monolatry and henotheism see D. L. Petersen, "Israel and Monotheism: The Unfinished Agenda," in *Canon, Theology, and Old Testament Interpretation*, 97-98; Also see A. P. Hayman, "Monotheism: A Misused Word in Jewish Studies," *JJS* 42 (1991): 1-15.
[4] Halpern, "Jerusalem and the Lineages," 42, 59, 79. For a massive literary composition in Hezekiah's time, see Schniedewind, *How the Bible Became a Book*, 75-84.

G. The Significance of Josiah's Reform

While King Manasseh (698-43), who had an extraordinarily long reign after King Hezekiah, deliberately reversed former royal international and domestic policies, the two historically unconnected nationalist movements between the reign of Hezekiah and that of Josiah could not have been associated without the means of a recognised document and Yahwistic politicians who preserved Davidic tradition in the monarchy. The discovery of an important scroll in Josiah's time might have inspired the king to formulate his own policy for national restoration at the end of the Judean monarchy.

1. State Reorganisation

The interpretation of Josiah's reform has been a crucial issue in the study of the OT law (see chapter 4.E). It is worth noting that there is a striking similarity between Josiah's cultic reform in the DtrH and corresponding issues elaborated in the DL. The distinction of the DL, such as the concept of the exclusiveness of Yahweh actualised in the cultic centralisation and in the elimination of the Canaanite cult, the legislative position and function of the written law, and the concept of covenant are all recaptured, or find a precedent, in the Deuteronomistic account of the reform. It is possible, therefore, that in order to provide a monarchical authority for systems regulated in the DL, the DtrH creates a historical paradigm and continuum of Yahwism from monarchical and even pre-monarchical Israel, if we include the Pentateuch, to the Exile. Hence, we cannot rule out Deuteronomic elements in the composition of the Deuteronomistic account of the reform (see chapter 4.E.1).

Nevertheless, in spite of the ideological elements in the narrative, the latter might indeed have reflected the king's ambitious attempt inspired by the legacy of King Hezekiah who had incorporated the northern population and brought the Judean monarchy to a new level of international relations, economic and administrative urbanisation and centralisation (see chapter 4.C). It seems likely that King Josiah intended to reorganise Judean monarchy when the grip of the Neo-Assyrian Empire came loose. This could have included the cultic reform in order to venerate the

national god Yahweh,[1] the reorganisation of state administration against social injustice and corruption, and the redistribution of temple land and state revenue in order to regain state control of the economy.[2] In this political context, abolishing local shrines and unorthodox cultic sites would have many implications: fitting the radical prophetic teaching of loyalty toward Yahweh in relation to social justice, meeting the political demand of power centralisation, and bringing state revenues and the land back from local shrines to the state. The king is apparently hailed as a just king in the book of Jeremiah, who did justice and righteousness, and judged the cause of the poor and needy (Jer 22:15-16). It appears, therefore, that rather than a pure religious reform as in the DtrH, the reform would be nation-wide, as a means to strengthen the nation as a whole.

With the king's success in state reorganisation,[3] the realisation of his ambition to restore the nation as under Hezekiah's leadership could have been possible. In this monarchical context, the importance of Josiah's reform to Israelite religion would be again the centrality rather than the exclusiveness of Yahweh. However, the unique centrality could be interpreted as an intolerance to those unofficial cults which could not undermine Yahweh's chief position, yet could have posed a distraction to Yahweh's cult. Thus, the significant development of Israelite religion, as Clements has noted, cannot be located in Josiah's reign.[4] But it is possible that the death of the able king and the subsequent destruction of the monarchy had triggered the preservation and idealisation of the king's and monarchical legacies literarily and politically.

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[1] Ahlström understands that King Josiah neither destroyed the *bāmôt*, nor removed their priests from state cult, but instead defiled those regional cultic sites and placed their priests under the supervision of the temple priesthood in Jerusalem. See his *Royal Administration*, 68-70.

[2] Based on the analysis of several bullae dated to the seventh century BCE, Michael Heltzer suggests that King Josiah had established a tax-collecting system when Assyrian rule collapsed and the Judean monarchy recovered from the campaign of Sennacherib. See his "Some Questions concerning the Economic Policy of Josiah, King of Judah," *IEJ* 50 (2000): 105-08.

[3] For a rather positive view on this issue, see Martin Noth, *The History of Israel* (trans. Stanley Godman; London: Adam & Charles Black, 1958), 269-78. Ahlström, on the other hand, suggests the extension of Judean territory to the west, rather than to the north. See his *Royal Administration*, 72; Vaughn's reconstruction and analysis also suggests that the only areas that Josiah had greater presence than Hezekiah were in the marginal areas of the Judean Desert and the Negeb. See his *Theology, History, and Archaeology in the Chronicler's Account of Hezekiah*, 19-79.

[4] R. E. Clements, "The Deuteronomic Law of Centralisation and the Catastrophe of 587 B.C," in *After the Exile: Essays in Honour of Rex Mason* (ed. John Barton and David J. Reimer. Macon, Georgia: Mercer University Press, 1996), 5-25.

2. The Legacy of the Monarchy

The sudden death of King Josiah (609) certainly had a dramatic impact on a society sustained by elite leadership rather than established systems. The political vision of national restoration designed by King Josiah would have been abandoned by those later kings who were defeated first by Pharaoh Nechoh II and later removed by the Neo-Babylonian power.[1] In spite of the fact that the Judean monarchy was spared from immediate destruction, the nation had been significantly weakened by Babylon's policy towards Philistia, which has been characterised by modern scholars as massive military destruction[2] and elite deportation.[3] The weakening situation and political impotence of these succeeding kings (2 Kgs 23:31-37) would have bitterly disappointed the adherents of King Josiah. The scattered information from prophetic work cannot tell us if the codification of the origin of the DL as the legal legacy of King Josiah was initiated at that time, nor how those Yahwistic politicians resisted the imminent destruction of the nation during the reigns of the last Judean kings. What we have is a massive literary work in its present form, which appears to be enriched by the exilic experience and bears strong evidence as to the leading position of the Yahwists in the exilic communities. [4] The combination of the law and the kingship of Yahweh in the Torah can be attributed to them.

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[1] David S. Vanderhooft has noted that while Assyrian rule in Syria-Palestine had been defunct for more than three decades before Nebuchadnezzar's incursions, the Egyptians exerted influence on this area, especially in the period after the death of Assurbanipal (627 BCE). See his *The Neo-Babylonian Empire and Babylon in the Latter Prophets* (HSMM 59; Atlanta: Scholars Press, 1999), 63-81.

[2] Ibid, 104-110. For a survey of these destroyed sites, see A. Mazar, *Archaeology of the Land of the Bible, 1000-586 B.C.E.* (Garden City, N.Y.: Doubleday, 1990), 458-60; E. Stern, "Israel at the Close of the Period of the Monarchy," *BA* 38 (1975): 26-54.

[3] Vanderhooft has concluded that the Babylonians' policies were not aimed, like the Assyrians', at colonisation or systematic economic exploitation of those defeated nations, but was rather focused on control of the region through periodic military appearances in order to ensure delivery of tributes. Likewise, the Babylonians did not practise Assyrian cross-deportation, but deported elite populations into the Babylonian heartland and settled them in discrete enclaves. See his *The Neo-Babylonian Empire and Babylon in the Latter Prophets*, 81-114; idem, Vanderhooft, "New Evidence Pertaining to the Transition from Neo-Babylonian to Achaemenid Administration in Palestine," in *Yahwism after the Exile: Perspectives on Israelite Religion in the Persian Era* (ed. R. Albert and B. Becking, STAR 5; Assen: Royal Van Gorcum, 2003), 219-35.

[4] Schniedewind suggests that the Judean royal family in Babylon was the sponsor of exilic writing and of preserving the literature of pre-exilic times. However, given that exilic literature had transformed royal ideology into a new socio-political form (see chapter 7), it would be impossible that the royal family played a dominant role either in exilic composition or post-exilic restoration. See the review and analysis by Schniedewind, *How the Bible Became a Book*, 139-64; also see N. P. Lemche, *Ancient Israel: A New History of Israelite Society* (Sheffield Academic Press, 1988), 173-75, 182.

H. The Development of the Concept of Yahweh

The development of the concept of Yahweh's kingship in Israel can be seen in both the universalism and nationalism of Yahwism in the HW. While early work seems to manifest the universalism of Yahweh as the king in divine council in relation to Israel, the later Hebrew work places the emphasis on Yahweh's kingship in particular relation to the human world, especially to the office of human kingship in Israel. Thus Yahweh is not only seen as a king in the divine world and as a patron god of Israel as those deities reflected in Mesopotamian writings, but also as a universal king actively involved in the administration of justice both in the divine and human world.

1. The Universalism of Yahweh's Kingship

Halpern has pointed out that the HW manifests the universality of the kingship of Yahweh in two ways: the victory of Yahweh over the sea in the creation story and Yahweh as a just king in the administration of universal justice. This is particularly demonstrated in Psalms. The primordial origin of Yahweh's kingship is connected with the creation of the universe that involves the defeat of sea (Ps 74:12-17). Like *Marduk*, the enthronement of Yahweh among the gods is manifested by the cosmic wars in the pattern of the divine warrior (Ps 24:1-10, 93:; 97:; 29:; 89:5-13; 96:).[1] The universality of Yahweh's kingship is well articulated in Psalms 47 and 99, wherein Yahweh is enthroned over gods and nations–the whole universe, and especially in relation to Jacob (99:4). The firmness of Yahweh's sovereignty over the universe also finds its expression in Job 38:4-33, which describes how Yahweh secured his kingship in the divine council via powerful creation and the establishment of the order of the universe. No doubt, in accordance with the

[1] B. Halpern, *The Constitution of the Monarchy in Israel* (HSM 25; Chicago: Scholars Press, 1981), 61-85; Mettinger, *In search of God*, 96-115.

prevalent Mesopotamian myth, these hymns articulate the uniqueness and triumphant process of the establishment of Yahweh's kingship in the council of the gods.[1]

Psalm 82, on the other hand, manifests Yahweh's universal kingship in the administration of justice. Yahweh is seen as a judge for all human nations as in the divine council, vindicating the poor and the orphan, the oppressed and the destitute on the earth (1-8). The eulogy of Yahweh's judicial role bears a striking similarity with the office of human kingship as exhibited in the cuneiform codes. The relations between Yahweh's universal kingship and the office of Israelite kingship are demonstrated in Psalm 89, in which Yahweh is hailed as a king, the holy one of Israel who established and strengthened Davidic kingship (89:3-4, 19-37). The institution of human kingship represented by Davidic kingship in Israel is seen as a component of divine governance in Israel. S. E. Gillingham has noted that Davidic kingship in this conceptual context appears as a symbol or eschatology of Israelite future polity rather than referring to the Judean monarchy in a historical sense.[2] Moreover, rather than in an indirect relationship between the gods and the Mesopotamians who appear only in direct relation to their human kings, the assembly of the Israelite people seems to stand in direct relationship with Yahweh (Judg 5:23; Ps 44).[3] The exaltation of Yahweh's kingship in these Hebrew hymns is explicitly concerned with both universality and nationalism, and finds its echo in the prophetic interpretation of national destruction.

In the context that the responsibility for political or natural catastrophes was largely placed on the people and their leaders in order to maintain the absolute power of the deity over events in the ancient Near East,[4] the political destruction of Israel is expounded in the prophetic literature as divine punishment for the religious, political

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[1] E. T. Mullen has noted that while the concept of the council of the gods was a common motif in the ancient Near East, the Israelite view of the assembly agrees in every detail with that of the council of the gods seen in the Ras Shamra texts. Thus, rather than from a Mesopotamian source, the influential source in relation to early Hebrew literature is attributed to Canaanites. See his analysis, *The Devine Council in Canaanite and Early Hebrew Literature* (SHM 24; Chico, California: Scholar Press, 1980), 211-84.

[2] See his "The Messiah in the Psalms: A Question of Reception History and the Psalter," in *King and Messiah in Israel and the Ancient Near East: Proceedings of the Oxford Old Testament Seminar* (ed. John Day; Sheffield: Sheffield Academic Press, 1998), 209-37.

[3] Halpern, *The Constitution of the Monarchy in Israel*, 67-68, 71.

[4] J. S. Cooper, *The Curse of Agade* (JHNES; Baltimore; London: The Johns Hopkins University Press, 1983); For the idea of divine abandonment of Ur, see P. Michalowski, *The Lamentation over the Destruction of Sumer and Ur* (Mesopotamian Civilisations 1; Winona Lake, In: Eisenbrauns, 1989), 8-9; For a general discussion, see van der K. Toorn, *Sin and Sanction in Israel and Mesopotamia*, 56-93. For a conceptual logic behind the interpretation, see Postgate, *Early Mesopotamia*, 272; also see A. Kuhrt, *The Ancient Near East*, vol. 2, 512-13.

and moral corruption of the two nations which had consequently ruined their relationship with the state god Yahweh.[1] Yet, in spite of the political destruction of the two nations, Yahweh is not seen as defeated by any patron god of those powerful empires, but could always be triumphant over them as the chief deity of the divine council. Correspondingly, the victories of the Neo-Assyrian power over the northern monarchy and of the Neo-Babylonian power over the southern monarchy are not attributed to the supremacy of the patron gods of these empires, but to Yahweh who decreed the punishment for the unforgivable sin committed by the two nations (Hos 12:1-15; Ezek 8:1-8; 16:23-30; Isa 65:1-7; Jer 7:16-20; 8:18-23; 11:17; 25:1-14; 36:26-35; 44:1-14). Nevertheless, the fundamental relationship between Yahweh and the Israelites could not have been destroyed, but had been renewed in the form of a new covenant, and the two politically destroyed nations are offered the hope of future restoration (see chapter 6.A.3).

2. Yahweh's Kingship in Israelite Politics

The conceptual breakthrough made in the understanding of Yahweh's kingship in particular relation to Israel is clearly exhibited in the Torah. The narrative instigates the concept of Yahweh's kingship with Yahweh's powerful creation of the universe in Genesis, which can be seen as a reflection of Yahweh's kingship in the Hebrew hymns and poems. The sovereignty of Yahweh over Israel is seen particularly through his involvement in human history as well as in the universe.[2] As the superior god in the divine world and as a national god of Israel, Yahweh actively intervenes in the human political world and the history of Israel is seen to be the manifestation of divine power. By intervening, he encountered and established a covenantal relationship with the ancestors of Israel, and thereby protected the nation from these natural and human-made catastrophes, especially in the Exodus. Accordingly, the nation had established a special relationship with him, and the

[1] These texts include Mic 4:10; Isa 5:26-30, 13:1-22, 14:1-23, and 21:1-10; Jer 5:15-17; 6:1, 22-30; 27:1-22. Habakkuk 1-2; Ezekiel 17: and 21:. For the passages pertaining to idols, see Isaiah 40:18-20; 46:1-2; 47:; and the anti-Babylonian oracles of Jeremiah 50:-51:. For the analysis of the verses, see Patrick D. Miller, Jr. *Sin and Judgment in the Prophets: A Stylistic and Theological Analysis* (SBLMS 27; Chico: Scholars Press, 1982), 1-79,121-39. Also see Samantha Joo, *Provocation and Punishment: The Anger of God in the Book of Jeremiah and Deuteronomistic Theology* (Berlin & New York: Walter de Gruyter, 2006).

[2] Biblical verses concerning the issue are Lam 1:18-20; 2:1-8, 17; 3:42; Ezek 6:1-7:14; Jer 1:13-19; 4:5-5:17; 9:9-21; 2 Kgs 24:1-4.

Exodus is seen as the birth of the nation. In this context, the promulgation of the law and covenant making in Sinai discourse all signify the sovereignty of Yahweh over the nation of Israel; Yahweh is not simply seen as the patron god of the nation, but as the very king of the nation who reveals himself and takes on the qualities of a human king.

Acting as a human king, Yahweh gave the nation the laws and led it to conquer and possess the Canaanite land, thereby establishing the nation as a political entity. Thus, as state document, the Torah institutionalises the developed concept of Yahweh's kingship on the one hand and political realisation of the recognition in the form of the theocracy on the other. Correspondingly, the constitution of the concept and the office of Yahweh's kingship in the Torah can be better tied to the period of the Exile when the existing political institutions had been destroyed. New systems had to be perceived as a better, yet politically acceptable alternative to reorganise the broken nation, thereby surviving the exilic climates as well as in accord with the reformulated ideology.

As the constitution of the new system, the DL further and more elaborately regulates the system of theocracy, defining the office of Yahweh in relation to the state cult, to the governing body of the system and to corresponding communal values and practices. It articulates that while taking on the qualities of a human king, Yahweh becomes responsible for leading his people to conquer the Promised Land and guaranteeing peace and justice for the nation (see chapter 7.C and D). Thus, the composition of Yahweh's kingship in the Torah was premised on the concept of human kingship prevailing in the ancient Near East, where a king often legitimated his kingship with military achievements and divine appointment, and promised good governance for the nation (see chapter 3.A and B). Correspondingly, Yahweh's position is seen as exclusive in the Torah in order to accord with the exclusiveness and oneness of the office of human kingship.

Evidently, Yahweh's kingship is embodied in the Decalogue and the laws dealing with religious treason in the DL (Deut 13:2-8). The present position of the Decalogue strongly suggests that concept of Yahweh defined by the four commandments is in direct relation to the office of Yahweh's kingship in the new system. In the context that an ancient society could only have one human king and one state god while celebrating many gods, Yahweh's kingship appears to be further enriched in the Torah with the qualities of transcendence, exclusiveness and

absoluteness. Combining with the universality of his kingship, Yahweh is perceived to be the unique god above any other gods on the one hand, and as a jealous national god tolerating no political and religion dissent on the other.

In this conceptual framework, religious treason in the DL (Deut 13) could be equally seen as political treason. Paul E. Dion has noted that the laws prescribing capital penalty for any type of religious treason in Deut 13:2-8 were neither sheer rhetoric, nor the manifesto of a circle of dissidents, but reflected the will of an idealistic ruler who wanted his covenant with Yahweh alone to be taken in dead earnest.[1] This ideal ruler, however, is not any human king in Judean society, but Yahweh, who requires undivided loyalty and love from his people as a king. Thus, the Torah develops the concept of Yahweh in order to correlate Yahweh's kingship to the reconstitution of the nation.

Conclusion

The survey of the development of the concept of Yahweh's kingship in relation to the rise of Yahwism as a political entity in Israel suggests that law and religion were originally separate agendas in monarchic Israel. While the law was in relation to practical state policy and administration, the development of the concept of Yahweh's kingship had its broad conceptual matrix in the ancient Near East and its particular socio-political context in Israel. Our investigation demonstrates that Yahwism did not emerge as a distinctive religion in Israel from the outset, and although historical events may have tended to emphasise the rule of Yahweh as a national god, and prophetic activities, perhaps, stressed his demands for loyalty and good governance, the historical Israel shows no particular differentiation of concept of god from its neighbours. However, in spite of this general trend, the rise of early Yahwism in the form of nationalism would have brought a closer bond between just governance and genuine piety; and the emphasis in prophetic teaching in the North on the centrality of Yahweh would have influenced later Judean policy-making and individual moral life. Further, although the royal reforms undertaken first by King

[1] Paul E. Dion apparently connects the laws with King Josiah's eradication of the clergy of the local shrines of Yahweh (2 Kgs 23:8-9) and his massacres of priests in the former kingdom of Israel (2Kgs 23:19-20). The Deuteronomistic account of the history, however, cannot be taken as purely historical (see chapter 4. F.1). See his "Deuteronomy 13: The Suppression of Alien Religious Propaganda in Israel during the Late Monarchical Era," in *Law and Ideology in Monarchic Israel*, 147-206.

Hezekiah and later by King Josiah might not have been characterised by cultic centralisation in historical reconstruction, the political and administrative centralisation under those kings might have indeed contributed to the development of state law and the unique centrality of Yahweh in Judean monarchy.

Thus, the crystallisation of the concept of Yahweh's kingship in relation to the theocracy in the Torah is better tied not to the period of the monarchy, but to the period of the Exile, when the nation was in the grip of new government and a new ideological orientation. The development of the concept of Yahweh's kingship, therefore, can be connected with the centrality of Yahweh in monarchical Israel in the broad context of the ancient Near East, and exilic understanding of the universalism and nationalism of Yahweh's kingship in particular in relation to the reconstitution of the broken nations. The propaganda of Yahwistic theocracy in the Torah can be taken as both a political and an ideological response to the destruction of the Israelite monarchies. In the exilic context that the nation had lost its monarchy, land and state temple, the new system was intended to restore the exiled peoples with a better and sounder governing system in which the state god Yahweh was regarded as directly taking the office of human kingship and ruling the nation by the written law. In order to investigate the interrelationships between divine king, law and people in the reconstitution, it would be necessary to unravel how the concept of covenant binds the nation together in the new system.

Chapter Six
Covenant and Law

Introduction

While the Hebrew codes in the Torah are presented as divine law given by King Yahweh for the reconstitution of the broken nation, the verification and enforcement of the law appear in direct relation to the concept of covenant. A scholarly question is thus posed as to the relations between law and covenant in the Torah, and the form of the Hebrew codes is identified by some scholars as a treaty or a covenant book. As a result, the nature of the texts is thereby expounded as religious or ideological teachings without legal force. This covenant model seems to have made its point based on the covenantal elements inherent in the texts; however, it cannot provide a coherent interpretive model for the multi-featured texts. On the other hand, while our analysis has manifested the nature of the Hebrew law as state law in relation to the concept of Yahweh's kingship, the position of the concept of covenant has to be equally considered in relation to the law in the Torah. For this reason, we shall investigate in this chapter the formation of the concept of covenant in Israel on the one hand and its relation to the law in the Torah on the other. Instead of readdressing the old issue as to whether the codes should be interpreted in the pattern of covenant, or vice versa, this chapter is primarily concerned with the questions how and why the idea was integrated in the Torah.

A. The Formation of the Concept of Covenant in Israel

The discussion of the formation of the concept of covenant in Israel has undergone different phases with different approaches and corresponding premises in modern scholarship. It moves from an early religious-social approach to the socio-

political context of a treaty, and then to a theological approach in modern scholarship. The development of the interpretation is important for our discussion of the social meanings of the practice of making *berīt* or treaty in the ancient Near East, and the particular meaning of the concept in Israel reflected in the HW.

1. The Interpretations of Covenant

A number of scholars have understood that the covenant in its Sinai setting as reflecting the oldest covenant in Israel, and the Mosaic community is seen as the socio-religious form of a pre-Israel community (see Chapter 1.C.1). Covenant is thus considered to be a social institution that could fulfill cultic, religious and political roles for those Israelite tribes who regarded themselves as Yahweh's vassals. This pre-Israel covenant is believed to have shaped the literary presentation of the concept in the Sinai pericope, in the book of Deuteronomy and others covenant texts in the HW. Despite the fact that later scholars dismissed this uncritical approach towards the text, the reconstruction of an early Israelite community and the social root of the concept of covenant cannot be totally dismissed.

The problem with the early dating of the texts is that the analysis is based on the antiquity of the treaty form and of phraseology employed in the description.[1] This however cannot stand. First of all, we should be aware that the practice of treaty making and its literary forms had prevailed in the ancient Near East for more than two thousand years across various regions and different cultures, so the adoption of a treaty concept and form in the composition cannot be taken as evidence for the antiquity of the text.[2] Likewise, the antiquity of certain ritual terms in the text cannot be identified as the antiquity of the text since the text went through different stages of expansion and redaction. In effect, it can be taken as the result of a scribal preference

[1] F. H. Polark demonstrates that the narrative of the Sinaitic covenant employs formulas that still adhere to the phraseology of the ancient Amorite Kingdoms of Upper Mesopotamia and the Mari realm. See his "The Covenant at Mount Sinai in the Light of Texts from Mari," in *The Moshe Weinfeld Jubilee Volume* (ed. Chaim Cohen et al; Winona Lake, Indiana: Eisenbrauns, 2004), 123-28; Also see John Day, "Why does God 'Establish' rather than 'Cut' Covenants in the Priestly Source?" in *Covenant as Context* (ed. A. D. H. Mayes and R. B. Salters; Oxford: Oxford University Press, 2003), 94-97; and J. A. Fitzmyer, *The Aramaic Inscriptions of Sefire* (BibOr 19A; 2nd ed. Rome: Pontifical Institute Press, 1995), 58-59.

[2] For an analysis of treaty terms in Amarna letters, Hittite treaties and OT, see E. F. Campbell, "Two Amarna Notes: The Shechem City-State and Amarna Administrative Terminology," in *Magnalia Dei, The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al; Garden City, New York: Doubleday, 1976), 39-54.

for classical terminology in the composition, with the purpose of antedating the text. Further, the treaty form itself has wide-ranging variations and the literary style of the Hebrew codes has a different implication (see chapter 1.B) so it is unnecessary to attribute the text to treaty form and function alone. Thus, while the Hebrew law apparently developed during monarchical times and was finalised in the exilic period in a historical reading of the text (see chapter 4), the combination of the covenant with the law has to be expounded in the new conceptual framework provided in the Torah.

Later scholars developed a theological interest in the concept of covenant. D. J. McCarthy, while taking the Sinai tradition (Exod 24:3-8; 24:9-11) as the earliest form of covenant in Israel, does not consider the book of Deuteronomy to be the literary deposit of an ancient cult and institution. Rather, it is understood to be a work of theological reflection on the relationship between Israel and Yahweh, with certain marks of ancient cultic and ritual notions of covenant.[1] Weinfeld also points out that the reformulated oldest Sinaitic tradition (Exod 24:3-8) places the emphasis upon the commandments of Yahweh and that the covenant acknowledges a new system of law, in which the liberation from slavery and the achievement of political independence were correlated.[2]

L. Perlitt views the concept of covenant as a product of a late period in Israel's history, arising particularly in response to various theological needs and crises from the times of the collapse of the northern monarchy in 722 BCE, to the destruction of Judah in 586 BCE, and further down to the exilic period. The term *berīt* was used by those Deuteronomists to explain the political destruction of the two nations, signifying Yahweh's promise to, and exclusive demand upon, Israel on the one hand, and interpreting the destruction of the monarchies and subsequent loss of the land on the other hand. For Perlitt, law and covenant appear in the Torah not only as terminologically exchangeable, but also conceptually correlated. While the law is understood to be given to Israel for its prosperity (Deut 6:20 ff; 16:15), the concept of covenant is used to illuminate the destruction of the nation as the consequence of breaking the covenant which directly unleashed the curses set in the code (Deut

[1] McCarthy, *Treaty and Covenant*, 92-96; See Nicholson's review in his *Exodus and Sinai in History and Tradition* (Oxford: Clarendon Press, 1973), 43-47.
[2] Weinfeld, *Deuteronomy and Deuteronomic School*, 152-56.

29:20-21; 25-28).[1] In this form, both law and covenant were employed to interpret the history of Israel: its prosperity in monarchic times, and its destruction in 722 and 586 BCE.

It is clear therefore that law and covenant in Perlitt's interpretation were mainly to judge the nations, rather than to reconstitute the nation after their political destruction. This, however, does not correspond to prophetic understanding of the relationship between exilic Israel and Yahweh reflected in the books of Jeremiah and Ezekiel, and would pose a difficulty for a constructive interpretation of the correlation between law and covenant in the Torah. This certainly calls for an analysis of the development of the concept of covenant in relation to the reconstruction of the nation.

With various observations made on the application of the term *berīt* in the HW, E. Kutsch understands the basic meaning of covenant as being imposed obligation or duty.[2] He makes an analogy between the Aramiac phrase *gzr 'dn* in a treaty texts from Sefire and the Hebrew term *kārat berīt*, and reaches the conclusion that the Hebrew term in the Sinai account is a direct equivalent to the Aramiac phrase, and that both share the same meaning as "to establish an ordinance". Correspondingly, *kārat* can mean "to decree" in addition to its literal meaning "to cut".[3] In this form, Kutsch does not accept that covenant is an agreement between God and his people, because they were not equal partners in the HW. Rather, it is clarified as Yahweh's promise to Israel: Yahweh's self-obligation on the one hand and Israel's duty to Yahweh on the other.[4] Thus, the law is seen to be an obligation imposed by Yahweh upon Israel, and the Sinai narratives (Exod 19:3b-8; 24:3-8; 34:27-28) to be a manifestation of Deuteronomic or Deuteronomistic influence, which cannot be dated earlier than the seventh/sixth centuries BCE.[5]

In spite of his denial of a theological interpretation of the concept, Kutsch's analysis of the terminology and concept of covenant in fact reflects a wider socio-political relationship between two involved parties in general, and the emphasis of

[1] L. Perlitt, *Bundestheologie im Alten Testament* (WMANT 36; Neukirchen-Vluyn, 1969); also see the review by Nicholson, *God and His People*, 109-17.
[2] E. Kutsch, *Verheissung und Gesetz: Untersuchungen zum sogenannten "Bund" im Alten Testament* (BZAW 131; Berlin and New York, 1973). For an English review of Kutch's work in relation to others' work, see Nicholson, *God and His People*, 89-109.
[3] Kutsch, ibid., 16-39.
[4] Ibid., 66-74, 102-152.
[5] Ibid., 134-145..

covenantal obligation in particular. The basic meaning of covenant would be essential to the understanding of the Hebrew law as Israel's duty towards Yahweh.

Following Perlitt, E. W. Nicholson also emphasises the theological meaning of covenant in the interpretation of the political destruction of two nations. However, unlike Perlitt, who considers the concept of covenant to be the Deuteronomists's invention without any theological root before Hosea, Nicholson argues that the notion was already circulating in the mid-eighth century BCE, and that Hosea is the one who showed it in his time.[1] Only at the hands of Deuteronomic writers, did the covenant between Yahweh and Israel receive its most intensive and expansive treatment from the late pre-exilic period on into the sixth century.[2] Thus these classical prophets, from Elijah onwards brought the old and unconditional covenant between Yahweh and Israel to an end, and replaced it with a new covenant which is conditioned by divine requirements.[3] Correspondingly, the Sinaitic covenant (Exod 24:3-8) is dated between Hosea and the Deuteronomic development of the concept. Thus the concept of covenant received a further exposition in Nicholson's analysis, not only defining but also redefining the relationship between Yahweh and Israel from the classical prophets to the sixth BCE.

Certainly, Nicholson's has laid down a conceptual foundation for the interpretation of covenant in its Hebrew context, and his shift from the analysis of the Sinai tradition to the covenant texts in prophetic works was right on track for the reconstruction of the development of the concept in Israel. Nevertheless, his understanding of the formation and development of covenant is mainly a theological idea, which itself is not a problem, but would pose a difficulty in interpreting the relationship between law and covenant exibited in the Torah. Therefore, it is necessary to explore the historical development of the concept of covenant in Israel and its correlation with law in the Torah.

Thus, the scholarship on the concept of covenant can be summarised. The early relationship between Israel and its patron god Yahweh can be seen as a contract between a husband and wife, as reflected in the book of Hosea, or as a natural bond between a father and son as in the book of Jeremiah (31:9; also 3:1-14, 19-22). [4]

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[1] Nicholson, *God and His People*, 121-88; also see J. Day, "Pre-Deuteronomic Allusions to the Covenant in Hosea and Psalm LXXVIII." *VT* 36 (1986): 1-12.
[2] Nicholson, ibid.,191.
[3] Ibid., 191-217.
[4] Wellhausen, *Prolegomena to the History of Ancient Israel*, 469.

Once Israel actually elevated other gods over Yahweh because of royal inauguration of foreign cults, and consequently abandoned the traditional values associated with its traditional religion, it in effect broke the natural bond, the unstipulated contract with the national god. Yahweh was thereby understood by the prophets not to be bound to remain in the role of patron to the nation. Whereas the northern monarchy opened itself to all kinds of infiltration, resulting in its inevitable destruction by the Neo-Assyrian power (see chapter 5.D), the prophetic warnings, which might have been disregarded by the northern elites, were evidently appreciated by the Judean elites, who reformulated classical prophetic work in order to reorganise the nation spiritually and politically.

In the times when Judean monarchy could not escape from the same fate as that meted out for the North, the concept of covenant would be further developed in order systematically to explain the political destruction of two nations on the one hand, and the immediate future of the exilic Israel on the other. Thus the concept of "old covenant" interpreted Israel's past relationship with Yahweh and the destruction of the two nations; and the concept of "new covenant" was to provide a new relationship and a new beginning for the broken nation, thereby meeting the theological demands arising from national catastrophes. Accordingly, the concept of new covenant is the key to understanding the revolutionary development of the concept of covenant in Israel and its correlation with law in the Torah.

2. New Covenant versus Old Covenant

The covenant texts pertaining to the concept of new covenant are located in the books of Jeremiah and Ezekiel, characterised by the covenant formula: וְהָיִיתִי לָכֶם לֵאלֹהִים וְאַתֶּם תִּהְיוּ־לִי לְעָם "I will be your god and you shall be my people".[1] Recent interpretation of the formula suggests that rather than originating from nomads in the ancient Arabic world, the formula resulted from adoption of the concept of marriage. The covenantal relationship between Israel and Yahweh is seen to be analogous to

[1] Rolf Rendtorff studies the concept of covenant based on the covenantal formula rather than the term *berīt* which would imply different meanings in different textual and social contexts in the HW. See his *The Covenant Formula: An Exegetical and Theological Investigation* (trans. Margaret Kohl; Edinburgh: T & T Clark, 1998), 1-37; trans. of *Die Bundesformel* (Stuttgart: Verlag Katholisches Bibelwerk, 1995).

Rolf Rendtorff has noted that in the book of Jeremiah, while the covenant texts in 7:23 and 11:4 address the relationship of Yahweh with Israel's ancestors,[2] the covenant formula in chapter 24 is linked to an exilic context, in which Jeremiah sees the vision of two baskets of figs in the first years of the Exile (24:1-3).[3] The internal interpretation of the vision demonstrates that the bad figs imply divine punishment for those who were politically and religiously unredeemable, and the good figs are identified with those of the Judean elite who were deported to Babylon (24:5). The good figs signify Yahweh's gracious promises both to preserve those exiles in Babylon and to bring them back to their ancestral land in Palestine (24:6). The covenant, following the interpretation of the vision, appears to be enriched with a new blessing: "I will give them a heart to know that I am the Lord; and they shall be my people and I will be their God, for they shall return to me with their whole heart" (24:7).[4] Explicitly, the relationship between Yahweh and the exilic and post-exilic generations would be improved with the blessing of a transformed inner being of the individuals in this covenant context. However, more than this, the concept of a new covenant is further illuminated by the comparison with the old covenant in chapter 31.

> The days are surely coming, says the Lord, when I will make a new covenant with the house of Israel and the house of Judah. It will not be like the covenant that I made with their ancestors when I took them by the hand to bring them out of the land of Egypt—a covenant that they broke, though I was their husband, says the Lord (31-32).
> But this is the covenant that I will make with the house of Israel after those days, says the Lord: I will put my law within them, and I will write it on their hearts; and I will be their God, and they shall be my people. No longer shall they teach one another, or say to each other, 'Know the Lord', for they shall all know me, from the least of them to the greatest, says the Lord; for I will forgive their iniquity and remember their sin no more (33-34).

It is clear that the new covenant brought a promise to the devastated nation and individuals that they no longer suffered from their failure in recognising Yahaweh as their Lord, and would be able to comprehend and to obey Yahweh's

[1] Seock-Tae Sohn, "I will be your God and You will be my People: The Origin and Background of the Covenant Formula," in *Ki Baruch Hu: Ancient Near Eastern, Biblical, and Judaic Studies in Honor of Baruch A. Levine* (ed. R. Chazan et al; Winona Lake, IN: Eisenbrauns, 1999), 355-72.
[2] Rendtorff, *The Covenant Formula*, 31-32.
[3] Ibid, 32-35.
[4] Ibid, 34-35.

instruction in contrast to the failure of the old generation. It is worth noting, however, that in spite of the development of the concept of covenant in early exilic time, there is no sign of the interrelationship between covenant and law in these covenantal texts. Contrary to the interdependent relationship between law and covenant in the Torah, the concept of new covenant is not related to written law, but to an inner instinct of right and wrong. It seems that the message reflects a negative attitude toward monarchical law by the time of the destruction of the Judean monarchy. This can be seen in the accusation about the false pen of the scribes who could write down the laws, but could not make people obey the laws (Jer 8:8).[1] It seems therefore that in place of the externalisation of law as in a monarchical power structure, the internalisation of Yahweh's rules is taken to be more important in the new covenant than the letter of the written law. Admittedly, when the monarchy could not avoid the destruction, those religious elites, as reflected in the prophetic interpretation of national catastrophe, had blamed the political leaders for the destruction. The king, the monarchical system and law would have been altogether dismissed without reservation. In this regard, the concept of new covenant in the early exilic period would be considered to be in contradistinction to existing state law which had no use for ruling the people's heart. In order to amend the legal system, a new covenant had to improve the inner being of the individuals, thereby possibly securing Israel's loyalty towards Yahweh.

When the nation had the chance of re-establishing itself, the function of law as a means of governance would have been re-recognised. In the circumstance that the old state laws no longer met the new demand, new laws had to be formulated with the complement of the reformulated old laws, and they altogether were being vested with a new authority (see chapter 4.E). In view of this, the concept of covenant could have been conjoined with the law in the relatively late exilic period when the broken nation was in need of a new order. Thus the new system designed

[1] Weinfeld argues that the book of Deuteronomy was the only existing law-book in Jeremiah's time and the verse did not charge the scribes with having forged the text, but only with having written it "in vain", which would mean that the scribes did not observe "the teaching" that they themselves had committed to write. See his *Deuteronomy and the Deuteronomic School*, 158-78. Timo Veijola, on the other hand, considers the accusation of scribal forgery and manipulation of the text highly probable, since the scribes were the only professional group who could produce a sophisticated literature which can be seen in the development of the book of Deuteronomy as a highly innovative and radical reformulation, compared to the CC. See his "The Deuteronomistic Roots of Judaism," in *Sefer Moshe: The Moshe Weinfeld Jubilee Volume: Studies in the Bible and the Ancient Near East, Qumran, and Post-Biblical Judaism* (ed. Chaim Cohen et al; Winona Lake, IN: Eisenbrauns, 2004), 468-69.

for the reconstitution of the nation could be internalised by the new covenant and externalised by the rigidity of the law. Therefore, rather than excluding the laws from the covenant, as it appears in the book of Jeremiah, the covenant in the Torah shows the inseparable interrelationship between religious obligation defined in a covenantal relationship, and the position of law in the reorganisation of the nation. While covenant is taken as the model of sovereign-subject relationship between the nation and Yahweh, the laws materialise the relationship as a socio-political system.

This development can be seen clearly in later covenant texts in the book of Ezekiel, where the concept of covenant apparently comes to another dimension. In the first covenant text (11:14-21), the formula is correlated with laws and a renewed heart; and the laws are further defined as statutes and ordinances, וְהַחֻקִּים וְהַמִּשְׁפָּטִים (11:12, 20), which explicitly correspond to the category of law presented in the Torah (Exod 21:1; 20.6; 24:3; Deut 4:45). A new spirit is added to a renewed heart to those who purge themselves from detestable things and abominations. Even Yahweh himself is seen to be a portable sanctuary in the inner beings of those exiles, in the circumstance that the material temple in Jerusalem had been destroyed and the people deported to the Diaspora (11:16).

The second covenant text (14:1-11), which calls for repentance of idol worship—a distinctive mark of monolatry, demonstrates a late exilic composition of the text. In the third covenant text (37:1-28), the new spirit is identified with the spirit of God (37:14), whose power is magnificently manifested in the vision of the restoration of the dry bones to life (37:1-10). The internal interpretation of the vision was apparently to raise a hope for a national restoration. With the gift of a new spirit, the broken individuals (signified by the dry bones in the vision) could be restored, and the two destroyed monarchies could be rebuilt and reunited as one single political entity under Davidic leadership (37:15-28). Clearly, these covenantal texts articulate a collective vision of the spiritual and political restoration of the broken nation.

The strong political implication of the new covenant in these texts suggests that the development of the concept can be placed between the end of the monarchy and the exilic period. In the early stage, the concept seems to be formulated as a mere theological concept redefining the relationship between Israel and its patron god after the political destruction of the northern monarchy. By the time that the southern monarchy faced the same fate as the northern, the concept had been further

developed, as reflected in the covenant texts in Jeremiah, in order to interpret the inevitability of the destruction on the one hand, and to offer a new hope for the deported Judean elites on the other. During the exilic period, the concept was then associated with the visions of political restoration of the nation conceived by those elites who had reflected on the past in Babylon, as manifested in the book of Ezekiel (also see Jer 3:18). The concept of covenant would have been seen as a component of the political scheme and associated with law. Thus the transformation of the concept of law from monarchy to theocracy was completed.

Evidently, the political ambitions to repossess the former monarchical territory, to re-establish Yahweh's temple and cult, and to restore social order under one rule and one ruler seem to be all recaptured in the Torah, especially in the DL. In this respect, B. W. Anderson has rightly pointed out that the new covenant in prophetic tradition and the Sinai covenant were "not a mere compromise between two radically different theologies in Israel, but a synthesis in which the whole was seen to be greater than the sum of its constituent."[1]

B. Covenant and Law in the Torah

The covenantal relationship between Yahweh and the Israelites is explicitly presented in the Torah: Yahweh is seen to be the state god of Israel, who made promises to the ancestors of the nation, and made a covenant with the generation of the exodus. That relationship seems to culminate in the promulgation of the law in the Sinai discourse and to be further verified by the conclusive covenant-making (Exod 24:3-8). Thus the covenantal relationship is unequivocally conditioned by the requirement of a strict observance of the enacted laws, and elevated from a common conceptual relationship between a state god and the nation to a socio-political relationship in which the state god is seen to be a sovereign ruler of the nation (see chapter 5.H). Hence, the combination of law and covenant in the Sinai setting marks a turning point for the relationship between Yahweh and Israel, echoing prophetic

[1] B. W. Anderson, "Exodus and Covenant in Second Isaiah and Prophetic Tradition," in *Magnalia Dei*, *The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al; Garden City, New York: Doubleday, 1976), 339-60, especially 357.

understanding of an ideal relationship between Yahweh, monarchy and Israel. That is, human political institutions should have been idealistically subordinate to the leadership of Yahweh and confined themselves to the commonly held religious and moral values (see chapter 5.D). The destruction of the two nations would be admittedly the fatal consequence of breaking such an inviolable order. By antedating the texts, the Torah seems typologically to embody the conceptual and political hierarchy between Yahweh, human leadership, and the people, in order to reconstitute the exilic nation.

1. Sinai Discourse—Pivotal Point of Covenant

This newly established covenantal relationship in the Sinai setting appears to be quickly broken by the iconic worship inaugurated by the high priest Aaron who set a golden bull as a representative of Yahweh (32:7-8). Although modern scholars have formulated different interpretations as to the nature of the iconic worship in Israel in general (see chapter 5 E) and calf image in particular (see chapter 5.B.2 and E),[1] it is condemned as high treason against the sovereignty of Yahweh in the narrative, posing a deadly threat to the very existence of the community (Exod 32:1-10). As a direct consequence, Moses had broken the two tablets, which would signify the breach of the covenant and law. The broken relationship seems to leave the nation in a vulnerable position, open to any attack without Yahweh's powerful protection. To restore the relationship, Moses made a passionate entreaty to Yahweh and firmly implemented the newly enacted laws by ruthlessly punishing the offenders (32:11--35).

Since the cult of the golden bull is seen by those Deuteronomists to be the typical apostasy found in the northern monarchy (1 Kgs 12:28), the scenario of the golden calf in the Torah would refer to religious unorthodoxy in monarchical periods in general. Modern interpretation may see the episode as the transfer of the centrality of Yahweh from Moses and the laws to a golden calf, rather than abandoning the cult of Yahweh.[2] The Deuteronomists apparently tolerate no such deviation or distraction. By recapturing the essence of Deuteronomistic interpretation, the episode in the Torah seems to expound why the northern monarchy was politically dissolved

[1] Also see Nicholson's review and analysis in his *God and his People*, 134-50.
[2] See J. I. Durham, *Exodus* (WBC 3; Nashville: Thomas Nelson, 1987), 420-22.

by Assyrian power and how the Judean remnants survived Babylonian invasions and deportation policy. While the collapse of the northern monarchy is seen to be an inevitable consequence of religious and political apostasy, comparable to those being punished in the narrative, the survival of Judean culture and people seems to be the outcome of the intercession made by those pious Yahwists and of Yahweh's remembrance of his promises to the ancestors of Israel. In this form, the destruction of the golden bull (32:20), the death punishment for those rebels executed by the Levites (32:19-29), and the divine sanction through a plague (32:35) all manifest how divine punishment can be meted out for two nations on the one hand, and Yahweh's gracious preservation of the remnant on the other.

Scholars, like Anderson, does not think that the narrative is concerned with a direct relationship between law and covenant.[1] The text does hint that in order to articulate Yahweh's absolute sovereignty over the nation in the aftermath of the political destruction of the nations, new laws had to regulate the system strictly in the new framework. Correspondingly, once the punishment meted for the calf cult, new laws were given in the following discourse, regulating the cultic system and the holy life of the nation in accordance with Yahweh's kingship and the new identity of the people. The covenant in the Sinai setting was thus intended to represent the relationship between Yahweh and the nations during monarchical times, and the remedy for the breach of covenant was to redefine and restrict the relationship with the law in the exilic context. Accordingly, the cooperation between covenant and law in the Mosaic community reflected an antedated idea of ideal governance for the restoration of the nation.

2. Covenant and Law in Deuteronomy

While the DL is presented as the second law-code in the Torah, marking a new beginning with a new challenge for the new generation, law and covenant appear interwoven and exchangeable in Deuteronomy (26: 16-19; 29:1, 21, 26). The concept of covenant characterises the ideological framework of the new system; the law regulates the system in detail; both are seen as irreplaceable for the reconstitution of the nation. However, rather than making a break between the old and new

[1] Anderson, "Exodus and Covenant in Second Isaiah and Prophetic Tradition," 182.

covenant, as in the prophetic interpretation, Deuteronomy seems to prefer a continuum of covenant: the covenant was broken, yet amended and reinforced (Exod 34:10-28), even though it would not be inappropriate if a new covenant had been made with the new generation in order to correspond to the new law. It seems that while making a typological composition in the Torah, the Deuteronomists were not confined by prophetic understanding of the concept, but demonstrate their ultimate interests in that law itself, which appears so essential to the national reconstitution.

Accordingly, the wisdom gift of the law is understood to be an inherent part of the law (4:5-8), rather than a gift of a new covenant. While a transforming power in the inner being of the individuals characterises the new covenant in prophetic work, divine wisdom directly inheres in the laws and can be acquired via studying and observing the laws. Unlike those proverbial wisdom sayings derived from social experiences concerned with individual success in society, the wisdom of the law appears to be the wisdom of intellectuality and integrity that would be essential for individuals to comprehend and internalise the laws. In this regard, the wisdom of the law seems to embrace two dimensions: one can be seen as pious wisdom, resulting in commitment to the laws in any circumstance; the other would be involved in the intellectual faculty in relation to the spontaneous contextualisation and application of the laws for various circumstances. Thus, the wisdom inherent in the law could enable the nation to realise the relevance of the laws to individual life as well as to national restoration.

Summary

It can be summarised therefore that the conceptualisation of the relationship between Yahweh and Israel as covenant emerged in the exilic period to meet the demand of redefining the relationship between the broken nation and its patron god. In order to provide a theological interpretation of the political destruction of two nations, the past bond between Israel and its state god Yahweh was thus defined as an old covenant benevolently initiated by Yahweh with the ancestors of Israel. This amicable bond was understood by classical prophets to be violated and broken by those political leaders who departed from traditional religion and its value during monarchical times, and consequently led to the political destruction of two nations. In order to mark a new beginning for the broken nation by the end of Judean

monarchy, the concept of a new covenant was perceived to redefine the relationship between Yahweh and the nation, which is enriched with the blessing of transformed inner being as reflected in the book of Jeremiah. The concept appears to have been further eloborated in the exilic period as in the book of Ezekiel, and directly linked with the law and political restoration of exilic Israel.

Prophetic interpretation of the covenantal relationship between Yahweh and Israel, and the interdependence of covenant and law, seems to be typologically embodied in the Torah. The covenant and law in the Sinai setting appear to be the old law and covenant, broken by the generation of the exodus; the DL is made for the next generation in order to establish them as theocratic statehood in the Promised Land. Thus, while stressing the merit and function of the new law in relation to the exilic generation, Deuteronomy prefers a continuum of covenant between Yahweh and the new generation.

C. Law and Covenantal Admonition

It has been noticed that the Hebrew codes distinguish themselves from the cuneiform codes by considerable use of motive clauses and explanatory notes.[1] This leads scholars to a conviction of the didactic function of the ancient codes on the one hand (see chapter 1. D.1 and 2), and the ideas of legal development on the other. Although the didactic function of the text cannot be identified as a non-legislative function of the text (see chapter 7.E.2), this literary phenomenon should be placed in the socio-political context of the composition in order to expound its purpose within the framework of the Torah. Apparently, the motive clauses and explanatory notes are mainly presented with the rules in the DL and the HC. A close look shows that the exhortations in the DL explicitly aim at two basic tasks: one is to emphasise the exclusive relationship between the sovereign and the subject in the new framework of the law, and the other to oblige and motivate the nation fully to implement the system regulated by the code.[2] Should they be understood to be religious persuasion

[1] Sonsino, *Motive Clauses in Hebrew Law*, 65-192.
[2] For the differences between the motive clauses in the cuneiform codes and in the Hebrew codes, see Sonsino, *Motive Causes in Hebrew law*, 172-75.

without legal force, or political propaganda enhancing the position of the law in the new system? Since both share certain similarities, the substantial difference between them can only be discerned in the framework of the text. [1]

G. von Rad views the book of Deuteronomy as a homiletic presentation of the various old traditions. The primary aim of the admonition was to appeal directly to the conscience of each individual in a time of national crisis in order to ensure human obedience to the divine will as reflected in the prophetic teaching. Rational and didactic elements were added to the old traditions with the purpose of making them readily comprehensible and memorable to the audience. However, the real characteristic of the presentation of the laws is not the laws themselves, but the exhortation. In this form, the text from chapter 4 to 11 is seen as a declaration of the basic principle of the exhortation, and the legal bulk from chapter 12 to 26 as exhortation in detail. These rules included in the central part of the book are no longer considered to be a piece of effective legislation, but as old traditions illuminating the exhortation. [2] Correspondingly, the setting of the exhortation is placed at a cultic celebration, such as a feast of covenant renewal (Deut 26:16-19).[3] Thus the code is regarded as an old tradition for a religious teaching without true meaning to the contemporary society.

Nevertheless, Von Rad's interpretation represents one modern Christian approach towards Jewish Scripture. While it may have correctly elaborated the didactic elements in the Torah, the position is grounded on theological rather than historical or social premises. Without the legal and moral substance of the laws, the sermonic admonition would be aimless. Moreover, didactic elements in the code cannot diminish the legislative position of the codes, but would suggest that the laws are meant to be learned and observed (see chapter 7.E).

In fact, the admonition for the commitment to the laws suggests that while Israelite political force could not fully implement Yahweh's kingship in exilic circumstances, ideological persuasion would be necessary to convince the broken and scattered remnants of Yahweh's sovereignty. Since the new system plays down

[1] For the differences and similarities between persuasion and propaganda, see Garth S. Jowett and Victoria O'Donnell, *Propaganda and Persuasion* (2nd ed., Newbury Park, London, New Delhi: SAGE Publications, 1992), 21-26.
[2] G. von Rad, *Old Testament Theology* (trans. D. M. G. Stalker, Edinburgh & London: Oliver & Boyd, 1965), 394-406; trans. of *Theologie des Alten Testaments* (vol. 2; Munich: Chr. Kaiser Verlag, 1960).
[3] In this form, von Rad does not think Deut. 12-26 functions as a legal corpus but as old canonical law. As for the Decalogue, he believes that it originated in the realm of the cultus as a sacral law of Yahweh. See his *Deuteronomy*, 18-23.

the role of human agents (see chapter 7. B.) and Yahweh's authority is mainly represented by the written code of the law, there is a need to reinforce Yahweh's office in the exilic communities as an alternative to royal power. The emphasis of Yahweh's exclusiveness and of Israelite covenantal commitment to his laws is thus in direct relation to the political and religious restoration of the nation.

Furthermore, as Von Rad himself has observed, this admonitory style particularly occurs in the first section of the rules, the elaborated version of the Ten Commandments (5:1-11:32), and in the rules regulating the state sanctuary and governing system (12:1-19:21); it also rounds off the epilogue (26:16-27:10; 28:45-68; 29-30). The other rules are not accompanied by such sermonic persuasion and covenantal appeal (20:1-25:19). This can explain why these laws, אֵלֶּה הָעֵדֹ֤ת וְהַחֻקִּים accompanied by sermonic admonition, appear more important than הַמִּשְׁפָּטִים because they are concerned with the fundamental value of the nation and the governing system. Thus these admonitions in fact manifest the paramount importance of these norms in relation to the nature of the statehood that the exilic elite were going to establish (see chapter 5.H.2 and chapter 7.D).

The second block of sermonic admonition, which rounds off the epilogue, has been considered as a common device against any breach of the relationship between the vassal and suzerainty.[1] However, in spite of literary similarity and ambiguity between prologue-epilogue frame in a vassal treaty and in a law-code, the fundamental difference between them cannot be overlooked. A treaty between a superior king and his vassal nation would only define the king's partial suzerainty over the nation, particularly concerning material and economic tributes from the vassal nation, and political and military alliance between the two nations. [2] G. E. Mendehall has noted that these stipulations in a treaty normally regulate the interests of the overlord, but give no hint of interference in the internal affairs of the vassal state, and the only concern of the suzerain king was naturally in the succession to the throne of an heir who would remain faithful to him.[3] A law-code, on the other hand, would claim a full and absolute sovereignty for the king who enacted the law. Thus,

[1] F. C. Fensham, "Malediction and Benediction in Ancient Near Eastern Vassal-Treaties and the Old Testament," *ZAW* 74 (1962): 1-9; repr. in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (ed. D. L. Christensen; Winona Lake, Indiana: Eisenbrauns, 1995), 247-255.
[2] Mendenhall, *Law and Covenant in Israel and the Ancient Near East*, 1955, 34. A. Altman has noted different levels of subordination reflected in the Hittite treaties. See his "Rethinking the Hittite System of Subordinate Countries from the Legal Point of View," *JAOS* 123 (2003): 741- 756.
[3] See his "Covenant Forms in Israelite Tradition", *BA* 17 (1954): 59-60.

the differences between an international treaty and a law-code can be seen in the subject matter concerned in each text. The tendency is clearly manifested in the central part of the law-codes found in the ancient Near East. In this regard, the DL apparently functions as the constitution of exilic Israel and the laws regulate governing institutions, and social and moral orders of the community as a whole. Therefore, it would be inadequate to take these laws as treaty stipulations regulating a political relationship between two nations regardless of internal national affairs.

In this form, Yahweh cannot be seen to be a mere divine witness to a treaty-making, or a divine patron of a justice system in the cuneiform codes, but as a human king, who could realise the blessings and curses set in the code. A number of scholars have noted that the political and natural calamities presented in the sermonic malediction for law breaking were not to be seen as a mere threat, but as a reality, linked with the national catastrophes that Israel had experienced in its political destruction and subsequent exile (Deut 4:26-28; 28:41-44, 48-50; 64-68).[1] Thus, while the maledictions listed in the code may manifest an institutional interpretation of the drastic encounters of the nations with their powerful enemies, the benediction would express the desires of the broken nation who expected to regain the past blessings from Yahweh. This admonitory and concluding section in the code, therefore, re-emphasises the vital importance of observing the laws, which is considered to be in direct relation to the successful re-establishment of Israelite statehood from the ashe of its destruction.

Given the absence of central force in the exilic communities, the appeal for voluntary cooperation and unification would be absolutely necessary for the political realisation of the constitutional aim. It is not necessary, therefore, to take these covenantal admonitions as mere religious persuasion simply seeking voluntary cooperation and commitment: they can be political propaganda advertising and reinforcing the position of the law as a whole. Like those Mesopotamian kings propagandising their kingship as divinely decreed and asserting the value of the rules for establishing social order in the codes (see chapter 3.B), the DL highlights Yahweh's kingship and the essentiality of the law in order to re-establish political, religious, moral well-being of the nation. In the circumstances that the political system in the DL appeared as an innovative proposal to the exilic communities, the

[1] McCarthy, *Treaty and Covenant*, 172-87.

propaganda of the new system would be important to win wide support from those scattered peoples who became increasingly diverse and incommunicable while living in Diaspora. Thus the concept of covenant would reunite the diverse exiles with common interests and the laws could substantiate the interests in a workable political form.

D. Manumission Laws and Covenantal Society

The concept of covenant is not merely to define and redefine the relationship between the patron god and the nation after the Exile, but also to reshape the relationship between the individuals within the new system in order to show how a covenantal community should be. The attempt to constitute a covenantal community can be seen especially from those manumission and humanitarian laws within a code (Exod 22:21-27, 23:9; Deut 14:22-29; 16:9-12, 13-15; 24:17-18, 19-22; 26:12-15; Lev 25:). These rules cannot be divorced from other laws in each code, but should be equally understood in the new ideological and socio-political framework. In doing this, we shall investigate the social meanings of these manumission laws and their correlation with the covenantal ethos in the general contexts of the ancient Near East and in the particular context of exilic Israel.

1. The Traditions of Humanitarian Care

The manumission laws are explicitly concerned with the restoration of personal freedom and dignity from debt slavery in particular and with social care for the underprivileged in general. The DL periodically cancels debt in every seventh year for those who are unable to pay off their debt (15:1-6), encourages essential loans for those in need (Deut 15:7-11), restricts the duration of servitude to six years for native slaves (15:12-17), and restores lands to their traditional holders (Lev 25). These rules have been interpreted as a utopian vision for an idealised soceity in modern scholarship, which maintains that the rules were never meant to be implemented, but made purely for ideological satisfaction without any social meaning. Such a utopian interpretation, however, has overlooked the social

significance of these laws, since comparative study has demonstrated their roots in a king-based community and their background in royal manumission. Our analysis of these laws therefore shall consider both their socio-political roots and ideological factors in relation to the restoration of the exilic Israel.

a. Kinship Practices

Humanitarian care in the Torah may have a deep social root in a kin-based society. The strong sense of brotherhood in relation to the solidarity of a community has been recognised as a distinctive feature of a nomadic life organised by extended ties of blood, shared status and wealth or poverty.[1] It is highly possible that the traditional practices of common care might have provided a social basis for the formulation of these humanitarian laws in the Torah when the foundation of commonly held traditions had been undermined first by the monarchical system and then by the conflicting interests among different groups after the Exile. The laws seem to revalue generosity, hospitality and brotherhood towards one another in the new system as in a kin-based community. In this regard, the covenantal community can be interpreted as a reflection of such kin-based community as reconstructed by these sociologists and anthropologists (see chapter 1.C.1). However, these laws would also distinguish exilic Israel from a traditional kin-based community by restoring these values in a new ideological and socio-political framework. Instead of a mere encouragement of voluntary compassion, these laws could extend common kinship practices to a nationwide scale, and provide a legal ground for compulsory manumission actions, thus redefining social relationships and responsibilities in the exilic community.

b. Royal Traditions

A number of scholars have noted that the protection of vulnerable groups was a common royal policy and a virtue of gods, kings and judges in the ancient Near East.[2] This indeed finds its echo in the prologues of the cuneiform codes, where the kings propagandise their duties to secure peace and prosperity for their empires, and their special care for those underprivileged groups (see chapter 3.A.2). Although

[1] S. Bendor, *The Social Structure of Ancient Israel*: *The Institution of the Family (beit 'ab) from the Settlement to the End of the Monarchy* (Jerusalem biblical studies 7; Jerusalem: Simor, 1996), 45-118.
[2] F. C. Fensham, "Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature," *JNES* 21 (1962): 129-39; J. J. Finkelstein, "Ammişaduqa's Edict," *JCS* 15 (196 l): 91 - 104; idem, "The Edict of Ammişaduqa: A New Text," *RA* 63 (1969): 45-64; J. P. J. Olivier, "Restitution as Economic Redress: The Fine Print of the Old Babylonian *mēšarum-Edict* of Ammişaduqa," *ZABR* 3 (1997):12-25; Weinfeld, *Social Justice*, 75-96.

such political promises sound rather rhetorical to modern readers,[1] royal interventions in elevating political and economic devastation were not a myth in ancient times. In fact, such royal precedents can be found from Sumer, Babylonia (from 2400 to 1600 BCE),[2] and from Canaan and Israel.[3] While Finkelestein points out that *misharūm* could have been enacted several times in a king's reign,[4] Westbrook has noted that the *misharūm* act had three effects: the cancellation of taxes, the cancellation of public and private debts, and the introduction of miscellaneous reforms. The release of persons in debt-bondage and the return of lands seized for debt are seen as a natural outcome of such royal enactment.[5]

Noting the general trend in Mesopotamia for ancient rulers to pattern their social structures in order to reflect the rhythms of nature and to restore economic balance when the society was disturbed by military, financial or environmental disturbances, M. Hudson also points out that social justice was particularly weakest in Mediterranean lands, where wealth and economic power were held by individual households, rather than by the temples and palaces as in Sumer.[6] He thus suggests that the freedom inspired by the exodus in the CC, the septennial year of release in the DL, and Jubilee Year in the HC, would have been necessary in ancient Israel, and these laws in the Torah cannot be taken as abstract literary ideas, but should be seen as a reflection of concrete legal practices of freeing rural populations from debt servitude and the land from abrupt appropriation.[7]

With the awareness of the socio-economic function of these manumission laws in the ancient Near East, a number of scholars place the codification of these Hebrew laws either in northern or Judean monarchy in the times when the monarchies created socio-political and economic differentiation.[8] Von Waldow suggests that these laws were formulated in response to fresh socio-economic dynamics in the North in order to exacerbate the plight of widows, strangers, and

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[1] Zaccagnini interprets the promises as an optimistic and utopian vision of royal propaganda, see "Sacred and Human Components in Ancient near Eastern Law," *HR* 33 (1994): 278-80.
[2] Michael Hudson, *The Lost Tradition of Biblical Debt Cancellations* (New York: The Henry George School of Social Science, 1993), 63-65.
[3] Ibid., 66-68.
[4] J. J. Finkelestein, "Some New Mishamm Material and its Implications," in *Studies in Honor of Benno Landsberger* (*AS* 16; Chicago, 1965), 233-46.
[5] R. Westbrook, *Property and the Family in Biblical Law* (Sheffield: Sheffield Academic Press, 1991), 45-46.
[6] Hudson, *The Lost Tradition*, 13.
[7] Ibid., 7.
[8] See the review and analysis by H. V. Bennett, *Injustice Made Legal: Deuteronomic Law and the Plight of Widows, Strangers, and Orphans in Ancient Israel* (Grand Rapid: Eerdmans, 2002), 1-22.

orphans; and the laws were not to prevent, but rather to ease the problems.[1] Crüsemann, on the other hand, places these laws into the socio-historical framework of the Josianic reform, as a reworking of the CC, and considers these laws to be an altruistic effort to ameliorate the plight of the underclass, seeking to prevent or to make it more difficult for those free landowners.[2] Walter Houston, on the other hand, expresses his reservation as to the eighth century monarchical context of the formulation, since the social conditions described in classical prophetic work would have certainly recurred in later times and could have been even more severe in the fifth century.[3]

In view of these, the general picture of ancient manumission practices would be: on a national scale the ancient kings irregularly issued certain *mēšarum* to relieve social and economic pressures intensified by various human-made and natural disasters occurred in a monarchical system, and the judges might take a lenient approach towards those unfortunate individuals in the courts; on a communal level, individuals might spontaneously come to aid their families and relatives for the honour and interests of the household. However, such social cares would have been limited by blood tie in a kin-based community and by an individual king's disinterest in royal practice of manumission. It is important therefore to find out how and why the Hebrew manumission laws distinguished themselves from those existing traditions in order to restore the broken nation in a sensible way.

2. Traditions in Exilic Context

While the antiquity and the practicability of the manumission practices can be verified,[4] a scholarly question has particularly been raised as to the practicability

[1] H. E. Von Waldow, "Social Responsibility and Social Structure in Early Israel," *CBQ* 32 (1970): 182-204. Waldow's position is further elaborated by Bennett, *Injustice Made Legal*, 127-72. Also see J. A. Dearman, *Property Rights in the Eight-Century Prophets: The Conflict and its Background* (Atlanta: Scholars Press, 1988), 18-61.
[2] Crüsemann, *The Torah*, 215-34.
[3] W. Houston, "Was there a Social Crisis in the Eighth Century?," in *In Search of Pre-Exilic Israel* (ed. J. Day; London; New York: T&T Clark, 2004), 130-49.
[4] See the review by Westbrook, *Property and the Family in Biblical Law*, 38-50; and J. A. Fager, *Land Tenure and the Biblical Jubilee: Uncovering Hebrew Ethics through the Sociology and Knowledge* (JSOTSup 155; Sheffield: Sheffield Academic Press, 1993), 22-36.

of the Jubilee laws: why did the priestly writers adopt a fiftieth-year pattern for a nation-wide land manumission? Since land was vital in ancient times either for ordinary households or ruling class, and the land tenure system designed in the PC would impede economic growth in general,[1] a number of scholars has thus argued that the laws were not a legal, but literary composition, merely for ideological satisfaction.[2]

Nonetheless, these reformulated manumission laws had their socio-political meanings in an exilic context, as Fager points out.[3] They would reflect not only the royal practice of manumission in relation to the concept of Yahweh's kingship, but would also signify the inception of national restoration at a certain point of history. Evidence within the HW indicates that the various traditions in the OT are written from the returnees' vantage point, who regarded themselves as the true Israel and considered those who remained in Palestine insignificant (Jer 24:1-10; Ezek 11:, 33:23-24, 27-28; Isa 43:28; 49:6, 51:3, 52:2, 9).[4] This is important to the understanding of the political and economic tensions between Palestinians and the returnees on the one hand, and the purpose of reformulating the laws on the other.

a. Exilic Social Context

Certainly, the political decline followed by the destruction of the nation would have devastated the nation as a whole. As an inevitable consequence, the deterioration of the socio-economic circumstances of the poor and of widows could have become increasingly unmanageable so that the last king of the Judean monarchy had to issue an edict to free male and female Hebrew slaves, in order to release the accumulated socio-economic pressure (Jer 34: 8-22). Scholars have linked King Zedekiah's emancipation to the laws regarding slavery in the Torah. Nahum Sarna understands that the royal emancipation was based on the relevant laws found in the DL (15:12-18) because of linguistic familiarity between them.[5] However, as he himself has noted, in spite of no real contradiction between the Deuteronomic law and the emancipation in Jeremiah, the action of Zedekiah would

[1] For a summary analysis, see Ellickson and Thorland, "Ancient Land Law," 402-11.
[2] Westbrook, ibid., 54-57.
[3] Fager, *Land Tenure*, 38-51.
[4] C. Shultz, "The Political Tensions Reflected in Ezra-Nehemiah," in *Scripture in Context: Essays on Comparative Method* (ed. C. D. Evans et al. Pennsylvania: The Pickwick Press, 1980), 221-44.
[5] N. M. Sarna, "Zedekiah's Emancipation of Slave and the Sabbatical year," in *Orient and Occident: Essays Presented to Cyrus H. Gordon on the Occasion of his Sixty-fifth Birthday* (ed. Harry A. Hoffner. AOAT 22; Kevelaer: Butzon & Bercker, 1973, 143-47; Also see S. Chavel, "Let my people go!" Emancipation, Revelation, and Scribal Activity in Jeremiah 34.8-14." *JSOT* 76 (1997): 71-95.

involve the general and simultaneous emancipation in the book of Jeremiah, which would be limited to Jerusalem's community and regulate no slavery term.[1] It seems likely that rather than an ancient interpretation of the existing law in DL, Jeremiah's account reflects royal spontaneous manumission in a time of national crisis.[2] Thus, the reformulation of these manumission laws in the DL were mostly to respond to exilic circumstances.

In the form of law, these policies could redress economic and financial imbalance in general on a regular basis, and pave a path particularly for the deported elite population to return their ancestral land, thereby rebuilding their home and socio-political status in the newly expanded community. Apparently, the dissolution of the monarchical system would have brought certain revolutionary changes in social structure and individual social and financial status. Admittedly, while being forced to emigrate from their homeland to Babylon (see chapter 5.G.2), the royal family and social elite would have been automatically deprived of their former socio-economic status.[3] As an inevitable consequence, a new aristocracy would have formed in Palestine to fill the vacuum left by the deported population; and wealth could have been reattributed and controlled by those powerful Palestinians.

How to reconstitute the nation after the Exile would be a paramount question for those of the elite who had been in a leading position in the movement of returning homeland from Diaspora. Apparently, the deported elite gradually gained a favoured position in Babylon (2 Kgs 25:27-30) and with imperial permission, they eventually instigated the movement officially.[4] In this context, the restoration of the nation would mean a priority of restoring the socio-economic status of those elites in exile in particular and the socio-political status of the new community in general. Accordingly, the manumission laws, as a part of the new legislation, would embody both elite interests and common social care for the devastated people. It is understandable that this one-sided political trend could have created a conflict between those members of the elite who returned from Babylonian captivity and the newly risen local elite, as reflected in post-exilic literature (Hag 2:2; Ezra 4:1-5,

[1] Sarna, ibid., 147.
[2] Sarna locates it in late 588 BCE. Ibid., 149.
[3] Shultz, "The Political Tensions Reflected in Ezra-Nehemiah," 223.-24.
[4] E. J. Bickerman points out that rebuilding Jerusalem temple was the turning point for the Yahwistic movement in Babylon. See his "The Babylonian Captivity," *CHJ* 1: 344-46.

6:21).[1] Thus, these royal edicts, which were issued as a periodical moratorium at the end of Judean monarchy,[2] were eventually reformulated as state law in the Torah. The new laws could have secured not only an economic rebalance between the residents of Palestine and exilic returnees, but would also have given the returnees a legal ground to rejoin the household they used to belong to and to reclaim their socio-political identity and privileges. These laws thus recognise former family structure and land system in the new system.

b. Land law

A number of scholars has particularly noted the existence of private ownership of lands in all historical periods in the ancient Near East, especially in Mesopotamia and Israel. In contrast to a view in previous scholarship that a single entity controlled all land in the ancient Near East and the societies only knew communal property, owners are now understood to have included individuals, nuclear households or a households including sons' wives and children. Their basic entitlements would include the right to exclude trespassers, the privilege to decide how the land was to be used, and the power at death to pass their land ownership to successors. The ownership of land also includes everything on the land, such as the houses and gardens, cropland, orchards and vineyard.[3] In this form, the land system in the Judean monarchy would have allowed a considerable amount of private ownership, combined with the crown and temple land systems so that the land law in the Torah would be crucial for a reconstruction of economic structure of the nation. It seems that the Jubilee laws (Lev 25) were particularly formulated for the returnees, since the Jubilee year would be around the year of the official return from the Diaspora (539 BCE), if the year of the destruction of the nation was considered as a sabbatical year that the land was left uncultivated because of the population deportation, or followed a sabbatical year as Sarna suggests (588-587).[4] In this

[1] For a detailed interpretation of the separation reflected in the concept of the alien in biblical law-codes in exilic and post-exilic contexts, see C. van Houten, *The Alien in Israelite Law* (JSOTSup 107; Sheffield: Sheffield Academic Press, 1991), 151-56.

[2] A. Rofé, "Methodological Aspects of the Study of Biblical Law," 13-16; for a different reading of the law, see M. Weinfeld, *Deuteronomy and Deuteronomic School*, 152-55.

[3] Postgate, *Early Mesopotamia*, 109-90; R. C. Ellickson and C. D. Thorland, "Ancient Land Law: Mesopotamia, Egypt, Israel," *CKLR* 71 (1995-96): 336-50; M. Liverani, "Lower Mesopotamian Fields: South vs. North," in *Ana šadî Labnāni lū allik--Beiträge zu altorientalischen und mittelmeerischen Kulturen: Festchrift für Wolfgang Röllig* (ed. B. Pongratz Leisten et al; Neukirchen-Vluyn: Neukirchener Verlag, 1997), 219-27.

[4] Sarna, "Zedekiah's Emancipation of Slave and the Sabbatical year," 149. For a review of different calculation of a Jubilee year, see Yairah Amit, "Jubilee Law—An attempt at Instituting Social

context, the unification and survival of the nation would be the top priority for a society that had already been bankrupt, broken into pieces. The elite writers would have concerned with the restoration of the old private land ownership more than capitalist interests concerned in modern scholarship because the policy would have been too crucial either to the restoration of personal socio-economic status and to the unification of individual households as a nation.

c. Exodus Theology and Yahweh's kingship

The manumission laws are supported in the Torah by exodus theology and by the concept of Yahweh's kingship (Exod 22:23-24; 23:9; Deut 15:10). Yahweh is seen to be a compassionate king who would act effectively to protect marginalised peoples and to repay uncompassionate individuals (Exod 22:23-24 Deut 15:9). As the king and the patron god, Yahweh could also directly activate the blessings and curses set in the code, thereby rewarding those who acted compassionately and punishing those who showed no mercy towards their underprivileged fellows.

The theology of Exodus, on the other hand, particularly recalls the hardship the nation experienced in the past and sees Yahweh as an epitome of compassion (Deut 15:15). The liberation of the exodus in the Torah marks not only the political milestone of the birth of the nation, but also lays a conceptual milestone for the restoration of humanity and dignity in the covenantal community. The hardship of the exodus and Yahweh's providence and provision for the nation can be taken as a manifestation of Yahweh's compassionate nature. His people are thereby encouraged to emulate their king and care for each other in the new system. Thus the codes distinguish themselves by establishing a covenantal society in which the care for those underprivileged groups is seen to be a common practice–for regularly redressing social, economic, and political injustice.

This ethos is evidently further developed in the HC, wherein the Jubilee laws see Yahweh as the very owner of the land (Lev 25:23, 55). Premised on this concept, each Israelite is entitled to restore their freedom, property and ancestral land in each Jubilee year. In spite of such an ideological orientation, these laws were not a utopian dream, but were formulated as practical measures for national restoration. Y. Amit's analysis shows that the Jubilee laws in the HC "demonstrate an attempt to struggle,

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Justice," in *Justice and Righteousness: Biblical Theme and Their Influence* (ed. H. G. Reventlow and Yair Hoffman; JSOTSup 137; Sheffield: Sheffield Academic Press, 1992), 47-59.

through the framework of the law, against the phenomenon of economic inequality and against the domination and exploitation of one part of society by another."[1]

On the other hand, these practical and political considerations could not guarantee a full implementation of these policies.[2] The applicability of these newly formulated laws had to be further tested in the course of social development (see chapter 7.E.2). As Westbrook points out, the formulation of the jubilee laws might have been based on a practicable and practised institution. The effect of the laws however, could not have been predicted given that certain practical consequences would have followed the enactment,[3] and that the policies, after all, represented the interest and ideology of those returnees. In any case, these manumission laws were intended to restore the individual freedom, social and financial status lost in the destruction of the monarchy on the one hand, and oblige and motivate the individuals to fulfil their covenantal responsibilities to their poor and underprivileged fellows on the other.

Conclusion

The analysis of the formation of the concept of covenant in Israel and its integration with the law in the Torah suggests that the systematic formation of the concept could only have taken place during exilic times, when the situation demanded both a theological interpretation of the destruction of the nation and a political restoration of exilic Israel. In order to institutionalise prophetic understanding of the covenantal relationship between Israel and its patron god Yahweh on the one hand, and to propagandise the paramount importance of the law in relation to Yahweh's governance on the other, the concept of covenant was embodied in the narrative in the Torah and conjoined with the law in a framework of Yahwist theocracy. A mutual relationship between the sovereign god and his subject people is thereby established: while Israel is obliged to observe the laws as stipulations of the covenant, Yahweh as the patron god and king of the nation is bound by his promises to fight for the exilic Israel against its political and cultural rivals and to re-establish its statehood in Palestine. Thus, the introduction of the

[1] Amit, "Jubilee Law," 51.
[2] Fager, *Land Tenure*, 119-22.
[3] See his *Property and the Family in Biblical Law*, 50-51.

concept of covenant in the Torah was not to replace or alter the position of Hebrew law, but to enshrine the law as divine law by redefining the relationship between the exilic Israel and its state god Yahweh.

The covenantal elements in the Torah therefore should be understood in this new socio-political system on the one hand and exilic circumstances on the other. While covenantal admonitions would have been intended to reinforce the constitutional position of law as the laws promulgated by King Yahweh, the manumission laws could have provided both social care in general for the underprivileged groups, and a legal ground for the restoration of individual freedom, dignity and socio-economic status in the national reestablishment. Law and covenant thereby become indispensable in the Torah for the reconstitution of exilic Israel. In this Hebrew context, the constitutional position of the Hebrew law can be further illuminated by the analysis of the these constitutional and administrative laws in the DL.

Chapter Seven
The Position of Hebrew Law in the Theocracy

Introduction

The concept of a holy nation and of a priestly kingdom in the Torah provides the primary and original meaning for the modern term "theocracy". It means that God is recognised as the king, or immediate ruler, and his law, as the very foundation of the system, is taken as the statute-book of the kingdom to which any individual and the governing body as a whole have to be subordinate.[1] In this regard, the theocracy exhibited in the Torah would leave no political room for the growth of dictatorship and can in effect be taken as a prototype of modern democracy without modern implications of theocratic dictatorship.

Since the Hebrew law distinguishes itself from the cuneiform codes by claiming its constitutional position in the theocratic system, scholarly questions have been raised as to the applicability of these Hebrew laws in relation to the establishment of the system in Israel. The fundamental debate between the historical and the utopian interpretation of the laws in modern scholarship deserves further discussion in relation to the actual position of the law in society. Correspondingly, the purpose of composition must be investigated in the light of the political and ideological framework of the theocratic system on the one hand and the socio-political reality of the composition on the other. In doing this, we will first compare the theocratic system perceived in the Torah with the Egyptian theocratic system in order to reveal what is distinctive about Israelite theocracy. We will then explore more closely those laws which particularly regulate the governing system in order to reveal the intended function of the laws in the reconstitution of the nation.

[1] See "Theocracy," in *The Shorter Oxford English Dictionary on Historical Principles*, 4:2166.

A. The Theocratic Model in ancient Egypt

Kingship, as noted in chapter three and five, was the typical system of government for both divine and human realms in the ancient Near East. The veneration of the office of human kingship was often in direct relation to the veneration of the state god. This general tendency seems to reach its peak in ancient Egypt, where the king was seen as a fundamentally divine being in spite of scholarly controversy over the quality and extent of the divine nature. Evidence suggests that this fundamental concept was further developed in the Middle Kingdom (1552/1550-1069) and the king was linked with all deities as the prime son and as an image of the creator god Re.[1] However, this view of divinity is not attached to individual kings personally, but to the office of human kingship in general. Hornung has particularly noted that a king might adopt the attributes of certain gods without being seen as identical with them; his qualities and capacities were actually considered to be inferior to those of the deities, and he received no cult in his lifetime.[2] These subtle changes in the concept of human kingship from one period to another did not have any impact on the basic belief that every Egyptian king was considered to be the incarnation of a deity. Certain Egyptian hymns suggest that a certain king's words were praised as the utterances of the god and that his actions were attributed to the power of Amun.[3] Although these songs may appear more romantic than theological, the truth seems to be that the divine nature of the office of human kingship was reaffirmed repeatedly through the temple cult, in which the king was simultaneously associated with the creator god. This idea is seen by Kuhrt as becoming increasingly prominent in the New Kingdom, in which the provincial shrine of Amun in Thebes was elevated as a state temple for the imperial cult; and the cult of Amun-Re appeared as the cult of the king as well.[4]

In addition to this conceptual and cultic link between the royal and the divine, royal administration and interests in imperial Egypt seem to be also inseparably

[1] Hornung, *Conceptions of God in Ancient Egypt*, 138-39.
[2] Ibid., 138-142, 191-92, 209.
[3] Ibid., 139, n.104.
[4] Kuhrt, *The Ancient Near East*, vol 1, 215, 191.

intertwined with the temples, as noted by Kuhrt. The relationship between crown and temple appeared not to be competitive or hostile, as is generally assumed. Rather, Egyptian priests represented a part of the royal personnel appointed by the king from among his officials. State temples and their property were considered to be an integral part of the state, providing it with prestige and income. Although the offerings and donations to provincial temples were theoretically given to the deities, the kings were the main political and economic beneficiaries of the divine cult. In return, the kings would often exempt many temples from taxation and public labour service.[1] In this way, the institution of state temples could not be separated from the exercise of royal power that was ideologically supported by the divine legitimacy offered by the temples. The governance of the Egyptian empire can thus be seen as a general model for the theocracy which is known throughout the ancient Near East, characterised by close political, ideological and financial ties between the office of human kingship and the operation of the temples.

The highlight of the Egyptian theocratic model can be seen in the theocratic administration established in Thebes. Kuhrt points out that the importance of Thebes is not only marked by the spectacular changes made to the physical features of the city and temple in the reign of Tuthmosis I (1507-1494/1504-1491),[2] but also by the theological development and recognition of the territorial god Amun as chief god, and his identification with the sun god Re as "King of Gods".[3] The city thus became a political and religious centre and was distinctively ruled by the specific oracles given by Amun-Re, which were dictated by the high priest. This trend, as Hornung points out, would result in increased arbitrariness of royal policy and in the kings' attributing their personal military victories and achievements to the gods.[4] Haring has noted that the administration of the high priest was in effect involved in matters far beyond regional and religious affairs, including all kinds of national affairs, such as making national policy, settling judicial cases and even private affairs.[5] As an immediate consequence, the position of high priest became politically irreplaceable,

[1] Ibid., 219-24.
[2] Ibid., 191.
[3] de Moor, *The Rise of Yahwism*, 103; Jan Assmann, *Egyptian Solar Religion in the New Kingdom: Re, Amun and the Crisis of Polytheism* (trans. Anthony Alcock; London and New York : Kegan Paul International, 1995); Hornung, *Conceptions of God*, 227-30.
[4] Horung, *Conceptions of God in Ancient Egypt*, 193, 211-12.
[5] For a detailed analysis, see B. J. J. Haring, *Divine Households: Administrative and Economic Aspects of the New Kingdom Royal Memorial Temples in Western Thebes* (Leiden: Nederlands Instituut voor het Nabije Oosten: 1997); for a summary, see De Moor, *The Rise of Yahwism*, 104-05.

second only to the Pharaoh. It seems that some kings were even impelled to adopt the title of high priest themselves in order to be consistent with the power structure of theocracy.[1] The manifestation of the god's power thus reached its climax in Thebes, and so did royal power in relation to its priesthood. This type of theocracy seems to develop further after the time of Ramses II (1279-1212 BCE) and as a result, the whole of Upper Egypt became a theocratic state in the 21st dynasty (1080-946 BCE) under the supervision of the high priest of Amun-Re in Thebes. Admittedly, the priestly administration relied on the general understanding of the concept of *ma'at* and in particular on oracles manipulated by the priests.

The socio-political development of the Egyptian empire indicates how close the association between crown and temple was, and how the concepts of god and of human kingship interacted with each other and served as an ideological source and political force that regulated Egyptian governance as a whole. Correspondingly, the Egyptian theocratic system was characterised by close links between divine and human kingship on the one hand and the leadership of high priests on the other. When compared with Egyptian theocracy, the theocratic system perceived in the Torah seems to be distinguished by a different ideology and governance; in particular, human kingship occupied a low position compared with the exclusiveness of Yahweh's kingship, and written law held a central constitutional place in the governing system.

B. Human kingship in Yahwistic theocracy (17:14-20)

The office of human kingship in the DL appears in a sharp contrast to the same position in Egyptian theocracy.[2] With an exceptionally low profile, human kingship is hardly considered an office in the system at all. The installation of a king is seen as optional in the theocracy, rather than as essential, as it is in a monarchic system (17:14, 15a). Moreover, the exceptional aspect of theocratic kingship is that the selection and inauguration of a human king have to be bound by the constitutional law. The law states that a king must be an Israelite chosen by Yahweh, which would

[1] The king in Tanis had to take the position of priest. De Moor, *The Rise of Yahwism*, 105.
[2] For the links between Egypt and Israel, see Carr, *Writing on the Tablet of the Heart*, 84-90.

mean that a hereditary king may be acceptable, but is not obligatory (17:15). A king must pledge not to be involved in horse trading or to use horses for military purposes (17:16); he is forbidden to follow customs of other ancient oriental kings such as acquiring a large harem or accumulating royal wealth (17:17). In addition to all these limitations, a king is not permitted either to be above the law or to make law, nor to exalt himself above other members of the community, but has to show an example, by diligently studying the laws and carefully observing them himself (17:18-20).[1] This marginalisation of the king and the constraints upon what he might do are extremely unusual, compared either with the common perception of monarchic kingship or with ideological traditions of sacred kingship elsewhere in the ancient Near East (See chapter 3.A).[2]

The silence on king's major roles as a military leader and as a supreme judge in the constitution has led to a variety of interpretations in modern scholarship. While Rüterswörden thinks that the silence indicates removal of these roles from a theocratic king,[3] some takes these roles for granted and suggests that a qualified king, who had acquired knowledge of the law and successfully set a leading example of conformity with it as he was required to do, would have been an appropriate leader in major state administration. In spite of the latter possibility, the new conceptual and political system designed in the Torah strongly suggests that particular aspects of an institution cannot always be taken for granted when the law is silent about them, as they can in the cuneiform codes (see chapter 2), since the aim of the Torah code was to replace rather than to reform or to strengthen a monarchic system. The office of human kingship in the theocracy in fact appears to be in direct contradiction to divine kingship on the one hand, and against exilic background on the other. It is important, therefore, to investigate the development of the concept of human kingship between the compositions of the two texts.

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[1] For a detailed interpretation of the laws, see G. N. Knoppers, "Rethinking the Relationship between Deuteronomy and the Deuteronomistic History: The Case of Kings," *CBQ* 163 (2001): 397-405; J. H. Tigay, *Deuteronomy*, 166-69.

[2] For summative review, see G. N. Knoppers, "The Deuteronomist and the Deuteronomic Law of the King: A Reexamination of a Relationship," *ZAW* 108 (1996): 329-31. For a comparison between prevailing royal ideology in the ancient Near East and the concept of human kingship in the DL, see B. M. Levinson, "The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah," *VT* 51(2001): 523-27.

[3] See U. Rüterswörden, *Von der politischen Gemeinschaft zur Gemeinde: Studien zu Dt 16, 18-18,22* (BBB 65; Frankfurt am Main: Athenäum, 1987), 90-91.

1. Monarchic versus Theocratic Kingship

In modern discussion, the study of theocratic kingship has been connected with the study of monarchical kingship presented in the DtrH. Early critical scholarship was divided between two opposing positions, according to whether the concept of kingship in the HW should be interpreted in a negative or a positive light.[1] Either the DL and the DtrH overall were seen as speaking with a single voice concerning the institution of human kingship,[2] or else Deuteronomy was seen as providing a 'norm' for the DtrH as a part of an integrated Deuteronomistic work.[3] The conclusion reached, as Gerbrandt has summarised it, was that while the DtrH takes a critical attitude to the monarchy, especially the northern monarchy, it does not criticise the institution of monarchy itself, but only individual kings who failed to meet Deuteronomic standards.[4] Levinson, on the other hand, demonstrates the inconsistencies and even contradictions between royal ideology prevailed in the ancient Near East reflected in the DtrH and the kingship regulated in the code, and thereby argues for utopian nature of the code.[5] Thus, the different nature of the two texts in the HW and the different purposes required for the two compositions deserve a further analysis.

First of all, the DtrH as the history of monarchies probably had its origins in royal annals, but were reedited during the periods of exile as a late Deuteronomic reflection on the destruction of the two nations.[6] In this regard, the standards formulated in the DL concerning the office of human kingship may have been introduced to written royal history only in a late redaction, rather than being the

[1] See the review of scholarship by Gerald Eddie Gerbrandt, *Kingship According to the Deuteronomistic History* (SBLDS 87; Atlanta, Scholars Press, 1979), 18-36.
[2] See the review by J. G. McConville "King and Messiah in Deuteronomy and the Deuteronomistic History," in *King and Messiah in Israel and the Ancient Near East: Proceedings of the Oxford Old Testament Seminar* (ed. John Day; Sheffield: Sheffield Academic Press, 1998), 273-75.
[3] See the review of M. Noth's work by Gerbrandt, *Kingship According to the Deuteronomistic History*, 1-12.
[4] Ibid., 96-102; also see Knoppers, "The Deuteronomist and the Deuteronomic Law of the King," 331-34.
[5] Levinson, "The Reconceptualization of Kingship," 511-34.
[6] For reading the DtrH as unified exilic work, see Martin Noth, *The Deuteronomistic History* (trans. Stanley Godman, JSOTsup 15; Sheffield: Sheffield Academic Press, 1981), 89-99, 141-42; trans. of Geschichte Israels, 2nd ed. For the view of separating pre-exilic and exilic layers of the DtrH, see F. M. Corss, *Canaanite Myth and Hebrew Epic*, 274-89; For an analysis o f multiple pre-exilic editions and at least one exilic edition of the DtrH, see A. Lemaire, "Toward a Redactional History of the Book of Kings," in *Reconsidering Israel and Judah: Recent Studies on the Deuteronomistic History* (ed. G. N. Knoppers and J. G. McConville, SBTS 8; Winona Lake, IN: Eisenbrauns, 2000), 446-61.

premise for the primary composition of the DtrH. It is reasonable that while Deuteronomistic appraisal of each king's performance reflects a Deuteronomic understanding of the socio-political function of the institution, the standard set in the DL was intended to offer a constitutional solution to the various problems and disadvantages of the institution that had been exposed during the history of the monarchies. Certainly, the destruction of the nations would have been seen as an opportunity to reconstitute a new system which would suit the broken nation better both ideologically and politically than the monarchical one had done. Correspondingly, the low profile of human kingship in the DL should be interpreted both in the light of actual royal traditions reflected in the DtrH and the political situation of Israel during the exilic periods.

According to the DtrH, the institution of monarchy as a system was already known to the Israelites before their own monarchy was established, and was seen as an inevitable choice to replace sporadic and regional leadership by the time of the religious and administrative leader Samuel (Jug 21:25; 1 Sam 8:1-22).[1] On the other hand, the DtrH also reflects late Deuteronomic reservations and an oppositional view that the institution of monarchy was neither the best governing system nor the only option for the nation. A political and ideological tension is thus deliberately created in the Deuteronomic redaction, thereby providing a conceptual paradigm for the negative attitude towards the institution as regulated in the DL. Thus, the destruction of the monarchies is interpreted in the DtrH as the inevitable consequence of the bad choice made when the monarchy was established; on the other, the formulation of a new political and ideological system in the DL is seen as the solution or remedy for the broken monarchies. Thus, the principle laid down in 1 Samuel 8 for the instigation of the monarchy should be taken as a late redaction in accordance with the constitutional law regulated in the DL. Both stress the non-mandatory nature of the office of human kingship, and both insist on the subordination of the human institution to the sovereignty of the divine king, Yahweh.

Nevertheless, in spite of the strong ideological affinity between the D and DtrH, certain differences can be discerned between the two texts. It seems that while

[1] Abraham Malamat has noted, "the natural desire to stabilise the sporadic leadership of the judges strengthened the tendency among the Israelites to give fixed and permanent form to the charismatic attribute that it might become a stable, organised, and hereditary function–a universal phenomenon known as the 'routinization of charisma'." See his "Charismatic Leadership in the Book of Judges," in *Magnalia Dei*, *The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al; Garden City, New York: Doubleday, 1976), 152-68, especially 164.

the Deuteronomic redaction is interested in the "legitimacy" of the institution as such, the origin of the DtrH as Annals of the Kings (2 Kgs 21:17) led it to try to assess the legitimacy with which individual kings exercised their kingship. Instead of blaming the downfall of the monarchies on the institution of monarchy itself, the DtrH repeatedly ascribes the destruction to the serious moral and religious degeneration that certain bad kings had accelerated. It seems that the DtrH is more interested in the qualities of monarchic leadership than in questioning the legitimacy of the system, which would have been beyond the understanding of the monarchic historians who served in the system. It was only possible to raise the issue of the legitimacy of the monarchy when the elite of the remnants had to reorganise the broken nation in the political climate that followed its defeat and subsequent reduction to the status of a colony. The formulation of the laws would have occurred at a time when the institution of monarchy may have lingered on for a while in spite of being in a fragile state before the final destruction, and the re-formulation of state law could not totally deny its existence, but could restrict it so that royal power could no longer pose a threat to the Yahwist elite.

2. Theocratic Kingship in Context

The logical context for the formation of the laws regarding the position of human kingship within a theocracy can be located between the death of King Josiah and the final destruction of Judean monarchy during which time the institution of monarchic kingship had been significantly undermined by the violent Babylonian suppression. This situation would have given both Josiah's adherents and the Yahwists an opportunity of reflecting on the institution itself, especially in view of the mistaken international policies adopted by the last Judean kings (2 Kgs 23:31-24:21). A new system, therefore, had to curb the king's power and royal prerogatives in order to survive the severe political climate at that time.

It seems that the formulation of the DL indeed took place in Babylon (see Chapter 5. G.2), where the Judean kings were kept in captivity and those members of the exilic elite would have not reconsidered the social function of human kingship in the new system. Accordingly, the concept of human kingship in the DL reflects both the political circumstances of the nation and its ideological development in the last stage of the monarchy. In order to preclude any political accusation from Israelite

political rivals and violent persecution from Babylonians, these delicate issues regarding the reorganisation of the defeated nation had to remain politically unquestioning of the imperial suzerainty. As a result, the royal patronage of the code was dismissed, the crucial roles of a human king as a chief administrator and military leader in a monarchic system are missing from the constitution, and so is the organisation of a supreme military hierarchy, which would have posed a potential threat to the empire. Thus, the human kingship in the DL reflects, on the one hand, the political reality of the broken nation during the exilic period, and on the other, the conceptual shift from monarchical to theocratic kingship.

C. Yahwistic Theocracy and the Sole Sanctuary

Yahwistic theocracy is further characterised by the construction of a sole central shrine in the place which King Yahweh will chose from one of the Israelite tribes. Early scholarship was concerned with the debate between "one place" and "any place" in the interpretation of the formulaic statement, הַמָּקוֹם אֲשֶׁר־יִבְחַר יְהוָה אֱלֹהֵיכֶם בּוֹ לְשַׁכֵּן שְׁמוֹ שָׁם.[1] The establishment of a sole state shrine, however, seems to be in relation to the concept of divine kingship on the one hand and to the centralisation of state administration on the other. The importance of the policy not only marks a significant stage of political realisation and material expression of the concept of Yahweh's kingship, but would also have led to a profound administrative reorganisation and a change in the religious life of individuals as a whole.[2]

1. State Temple and Divine Kingship

The cultic centralisation in the code bears a striking resemblance to the cultic centralisation in the Josianic reform in the Deuteronomistic account, and in early critical study the law was believed to have been made by King Josiah (see chapter 4.E.1). However, the seemingly similar law cannot be interpreted in the same socio-

[1] See the review and analysis by B. Halpern, "The Centralization Formula in Deuteronomy," *VT* 31(1981): 22-38.
[2] J. H. Tigay, *JPS Torah Commentary: Deuteronomy* (Philadelphia: Jewish Publication Society, 1996), 118-19.

political context, since the law in the DL is concerned with a different conceptual and socio-political structure. In fact, the Josianic reform has in recent scholarship been recognised as part of a political and administrative centralisation, mainly inspired by the political ambition of restoring the former glory of the nation, rather than by belief in the exclusiveness of Yahweh as claimed by the DtrH (see chapter 5.G). On the other hand, the cultic centralisation in the code cannot be taken as purely ideological–its political effect on the national restoration cannot be underestimated.

Modern discussion demonstrates that a sole central shrine can only be considered as a type of many forms of divine manifestation. Halpern points out that Yahweh's exclusiveness and uniqueness could have been manifested via a multi-shrine cult which would be a physical symbol of divine sovereignty over the land to which the multiple shrines were attached. Edelman has noted that cult centralisation would not have made sense from a religious perspective under the monarchy, since it would have amounted to a claim by the national god to those lands in whose sacred spaces he was physically present, symbolised by that presence. However, it would make ideological sense when Yahweh lost his specific ties to his former kingdoms of Israel and Judah as a national god and the Deuteronomistic legislation envisioned a single temple in accord with the reshaped concept of God in the new imperial environment.[1] Certainly, Edelman has rightly pointed out the ideological implication of the sole shrine in exilic times: it is seen as the symbol of unification under Yahweh's unique authority. It is important, therefore, to place the policy in the actual social context of the exilic community, in which the construction of the central shrine was intended to serve both ideological and socio-political purposes.

First of all, the theocratic system is primarily underpinned by the concept of Yahweh's kingship that is expressed in the Decalogue in the form of exclusiveness and oneness. Yahweh's earthly office is apparently materialised both by the written law and by the state shrine. While the former is an embodiment of divine will, the latter can be seen as the palace of Yahweh who attaches his powerful name to it. The sole shrine thus symbolises Yahweh's presence as a king ruling the nation as well as a state god. Accordingly, the transition from many shrines to a single one can be better linked to the conceptual development of Yahweh's kingship in Israel. In the times when the centrality of Yahweh had its radical expression in the concept of the

[1] Edelman, "Hezekiah's Alleged Cultic Centralization," 429.

exclusiveness and oneness of Yahweh (see chapter 5), a sole central shrine would have corresponded to the new status of the sole state god.

Thus, a sole central shrine not only magnifies the oneness of Yahweh's kingship and its incompatibility with any other; it is also a material symbol of the unique authority of Yahweh ruling over the remnants of Israel as the actual sole king. Administratively, a centralised city state would suit the broken nation which became physically much smaller and politically more diverse after the death of King Josiah.

2. The Implications of the Unnamed Site

The location of the central sanctuary is loosely defined by a formulaic statement in the constitution: הַמָּקוֹם אֲשֶׁר־יִבְחַר יְהוָה אֱלֹהֵיכֶם בּוֹ לְשַׁכֵּן שְׁמוֹ שָׁם (12:11; 14:23; 16:2, 6, 11; 26:2). Since Jerusalem, which had been the centre of state religion and administration in the Judean monarchy and in the HW, would be the most logical location, the deliberate anonymity of the vital location of the religious and political centre of the theocracy is puzzling. Some scholars therefore interpret it as being of northern origin, suggesting that the lost law book was initially preserved in the North and was later brought to the South by northern refugees in the aftermath of the fall of Samaria (see Chapter 4.B). The text would then reflect a northern rather than a southern viewpoint, or else the Judean editors reached a compromise with the remnants of northern monarchy on this issue. The interpretation of the formulaic expression has consequently been associated with other parts of the OT linguistically, historically and theologically, and indeed for a while became one of the major issues in OT studies.[1] Our interest here is the social meaning of the site as a part of the constitution, in the framework of theocracy.

[1] Based on this text and other related texts in the OT, a number of scholars suggest an evolutionary theological shift in Israel from the anthropomorphic and immanent images of the deity towards the more abstract, demythologised, and transcendent image of the deity, which is generally defined as name theology in modern scholarship. See Weinfeld, *Deuteronomy and Deuteronomic School*, 192-94; and T. N. D. Mettinger, *Dethronement of Sabaoth: Studies in the Shem and Kabod Theologies* (ConBoT 18; Lund: Gleerup, 1983), 38-79. Ian Wilson, on the other hand, dismisses the idea of divine transcendence in name theology, but argues for divine presence both in heaven and on the earth. See his *Out of the Midst of the Fire: Divine Presence in Deuteronomy* (SBLDS 151; Atlanta: Scholars Press, 1995), 199-217. For the formation and development of name theology, especially during the exilic periods, see W. M. Schniedewind, "The Evolution of Name Theology," in *The Chronicler as Theologian*. Edited by M. Patrick Graham et al. JSOTSup 371. New York; London: T&T Clark, 2003. 228-39.

Sandra Richter has placed the key phrase in broad linguistic, literary and political contexts in the ancient Near East. The importance of her work for our discussion is not only her linguistic contribution in the interpretation the key Hebrew term in its lingua franca, but also the strong political implication of the idiom in a royal context. By re-investigating this deuteronomic term in its literary context, she has noted that the formula *l^{e}šakkēn š^{e}mô šām* in effect resulted from the adoption of the well-known Akkadian idiom *šuma šakānu* which was widely used in royal monumental literature claiming royal ownership of the conquered territory in Mesopotamia. Richter thus suggests that the idiomatic expression in the biblical literature should accordingly be related to the political wellbeing of the Judean dynasty, instead of the interpretation being restricted to the sanctuary alone. The Hebrew form of the idiom in the DL is therefore understood to express a political aspiration that just as the great kings and heroes in Mesopotamia declare their victory and ownership, the Hebrew text emphasises the full sovereignty of Yahweh over the land that Yahweh will conquer and establish his central sanctuary within.[1] Thus the formula in the code was in effect intended to deliver a political promise to the broken nation that Yahweh would re-conquer the lost land as its true king, rebuild the destroyed state temple and restore its cultic system in the near future.

Richter also points out the subtle difference between two Hebrew forms of the Akkadian idiom. The form, *l^{e}šakkēn š^{e}mô šām*, which was merely an adapted form of the Akkadian idiom, would be barely intelligible to ordinary audiences, while the form *lāśûm š^{e}mô šām* would be clear, because it was a Hebrew calque on the Akkadian idiom. The statistics of the occurrence of these two forms demonstrate that the *l^{e}šakkēn* formula is particularly favoured in the book of Deuteronomy and occurs in Jer 7:12, Ezra 6:12 and Neh 1:9 but totally abandoned in the DtrH and the ChrH, where the *lāśûm* formula and other substitutes are adopted.[2] In view of the fact that the DtrH assesses each king's performance in the monarchies of the past, while the DL points towards future restoration in a theocratic system, the preference for one particular form in one particular type of literature may reflect different purposes in the adoption of the different forms of the idiom at different periods.

[1] Sandra L. Richter, *The Deuteronomistic History and the Name Theology: l^{e}šakkēn š^{e}mô šām in the Bible and the Ancient Near East* (Berlin and New York: De Gruyter, 2002), 127-217.
[2] Ibid., 43-52.

The trouble is that *lāśûm* formula also appears in the DL (12:5 21, 14:24) and the co-existence of both formulas in a single document indeed creates a puzzle for the discussion.[1] Richter suggests that the *lāśûm* formula, the preferred reflex in the DtrH, should be interpreted as later interpolation by Dtr1 in Deut 12:21 and 14:24, and by Dtr2 in 12:5, with the purpose of rendering the original Hebrew form of the idiom, *l^{e}šakkēn š^{e}mô šām*, in the biblical texts.[2] If this is true, the *lāśûm* formula, the more understandable form of the idiom, functions in the code as an interpretative alternative to the relatively unintelligible form *l^{e}šakkēn* that would be unfamiliar to contemporary readers or listeners. However, it is also possible that the *lāśûm* formula, as a more explicit Hebrew form of the well-known idiom, was coined earlier than *l^{e}šakkēn* formula and was used in a royal context in the pre-exilic edition of the DtrH. The later *l^{e}šakkēn* formula, on the other hand, was particularly used for the theocratic system in an exilic context, where articulating a political ambition for a defeated nation would have caused political trouble and an implicit form therefore became preferable. Thus, two forms of the idiom can be read in different textual and historical contexts.

Apparently, the DL exhibits the feature that each *lāśûm* formula is introduced with the clause, כִּי־יִרְחַק מִמְּךָ הַמָּקוֹם "if the place is too far from you". The text seems to suggest that the adaptation of the *lāśûm* formula can be understood in a social context that the location of the central shrine had not yet been decided, and its potential location could have created a geographic problem for those pilgrims who lived far from the state sanctuary. In view of this, the socio-political context for the introduction of the *l^{e}šakkēn* formula can be placed in early exilic circumstances, when the first temple was destroyed by the Babylonians and the aspiration for a political restoration of the temple and its cultic system envisaged by the Judean elite would have faced Babylonian suspicion and persecution. The implicit Hebrew form of the Akkadian idiom would have thus been chosen to express the idea. Once the political climate became relatively tolerable in the later years of Babylonian power, a great hope probably rose among those royal exiles who were kept in captivity in Babylon and had received favour from the Babylonian king about thirty-seven years after the Exile (2 Kgs 25:27-30). The old and intelligible Hebrew form of the idiom, the *lāśûm* formula, could have introduced to the code via redaction in order to make

[1] Ibid., 46.
[2] Ibid., 44, 59-63, 95-96.

In this socio-political context, the undecided site of the state sanctuary might indeed have indicated sensible consideration for those northern remnants who might have still regarded those shrine sites in former northern territory as more prestigious than the destroyed Jerusalem. For the purpose of unification and solidarity, it would be sensible not to make an explicit reference to the location of the future state sanctuary, especially when the exilic communities were still in a delicate and unstable situation. It is understandable, therefore, that the name of Jerusalem is mentioned neither in the entire book of Deuteronomy, nor in the entire Torah, while the Akkadian idiom actually became more familiar to captive Israelites as the years in Babylon went on and their language was increasingly influenced by those who lived around them.

Thus the two different Hebrew forms of the Akkadian idiom would have implied different socio-political circumstances in the times of composition and redaction. It can be surmised that, in preserving the meaning of the idiom without causing political suspicions on the part of the Babylonians, the *l^{e}šakkēn* formula was first coined to express the political aspiration in the code; when the political climate became more permissive, the Hebrew calque of the idiom which is preferred in the DtrH was introduced to the text in order to illuminate the meaning of the implicit form, thereby creating a powerful rhetorical effect for readers and listeners. This would place the timing of the composition and finalisation of the law between the destruction of the first temple and the rebuilding of the second temple; it was only during that period that the place where the central sanctuary would be reconstructed could not have been articulated or allocated. This policy was thus concerned not only with cultic restoration and the theological development of the concept of Yahweh's kingship; it was also a political scheme aimed directly towards the social, political and ideological reconstruction of the nation as a whole. Via the Hebrew forms of the well-known Akkadian idiom, it conveys the key message to those devastated peoples that Yahweh will conquer and repossess the Promise Land for them as the sole unique god and the king, thereby restoring their lost faith and political identity, their kingdom and their cultic system in a new form of governance.

D. Constitutional and Administrative Laws

The new system is distinguished by the legislative position of the law in the constitution of the governing system in the theocracy.[1] The Hebrew law is considered to be the written form of the divine law enacted by King Yahweh; and the legislative position of the code seems to be demonstrated in the reorganisation of the legal system within the theocracy. Given that once law is considered to be the legal, socio-political and ideological foundation of the new system, it follows that the law has to be developed to accord with its legislative function. In the typical development of law in modern times, a legislative position for the law leads to it having an increasing legislative function within actual state administration; and the legislative function of law can then directly stimulate the development and systemisation of law in order to meet various legal demands arising from different social spheres. Likewise, the establishment of a legislative position for the Hebrew law would inevitably lead to a linked response in the theocracy. Correspondingly, we should interpret the development of the Hebrew law in the Torah in relation to the practical demands that would have arisen from the reorganisation and transformation of Israelite society from a monarchical ideology and power structure to Yahwistic theocracy.

1. Law and the System of Justice (16:18-13)

Compared to the monarchical system, the reorganised legal system in the theocracy is characterised by certain improved elements: administrative centralisation and formalisation, and the promotion of the legislative status and function of written law in the legal system. The centralisation of the administrative system, as Levinson has noted, would require a chain of fundamental revisions, both of conventional forms of judicial procedure and of conventional sources of judicial authority. According to him, once the sole central sanctuary was established, it would have automatically closed various former local shrines, and consequently ended the

[1] S. D. McBride, "Polity of the Covenant People: The Book of Deuteronomy," in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (ed. D. L. Christensen; Winona Lake, IN: Eisenbrauns, 1993), 62-77.

judicial function of local priests and elders, which had been exercised at local altars or the gates of towns.[1] Moreover, with the firm establishment of the legislative position of the written law, the arbitrary power of judges had to be limited to the role of one who abided by the law. Thus, although administrative centralisation and judicial formalisation might not have been novel in former monarchies (see chapter 4), the new constitutional position of the law was unprecedented in the entire history of Israel and the ancient Near East. It seems, therefore, that the code was intended to create a brand-new form of governing system in the new framework.

a. The Central Court

The central court was designated as the headquarters of state administration in the place where the sole state shrine was to be constructed (17:8). The system was to be operated and administered by both judges and priests (17:9, 12). As regulated by the code, the cooperation between the two offices in the system of justice seems to have been on a regular basis, and the two public offices together comprised the most significant component of state machinery.[2] The main function of the central court was to deal with difficult cases; any kind of difficult case which needed further judicial inquiry and the interpretation of relevant law could be referred to the central court by a local court. These cases include "one kind of blood-shed and another, or one kind of legal right and another, or one kind of assault and another—any such matters of dispute in your towns—" (Deut 17:8-10).[3] Thus the cases tried by the central court appear not to be grounded on the gravity of the case, but on the legal skill and authority the case would require. This may explain why 'local elder' is not included in the judicature as an office, yet the man who holds it is obliged to execute local criminals (see d).There seems to be no indication that appeals were possible within the code, as some scholars have argued (17:10, 11).[4] However, the possibility of forwarding certain difficult or controversial cases from the local to the highest court in effect made appeal possible, though the central court was understood as a court of referral rather than a court of appeal. Only the decisions made by the central court on the basis of the law are regarded as final and unalterable (17:11-13).

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[1] Levinson, *Deuteronomy and the Hermeneutics of Legal Innovations*, 98.
[2] Priests seem only to become involved in jurisdiction when insoluble cases had to be referred to Yahweh by sacral means in Exod 22:7-10; 28:29-30; Num 5:11-31.
[3] For the interpretation of the three Hebrew terms concerning the different types of cases, see Tigay, *Deuteronomy*, 164.
[4] Ibid.,163.

The written law is seen as the authoritative source of jurisdiction, and accordingly requires professional interpretation and strict compliance in the administration of justice. The legislative position of the code is apparently based not solely on the claim of the divine nature of the law, but is also manifested by the actual legislative function in the system. The recognition of the legislative function of the law in the courts would have fundamentally enhanced the actual function of the law and consequently promoted the fairness and independence of the judicial system. Correspondingly, the justice system no longer subordinates itself to any powerful individual or institution, but solely to the authority of the written law. In the meantime, while the judge's power could have become increasingly arbitrary with the increasing independence of the court system, judges were not the sole institution exerting jurisdiction in the theocratic justice; their authority was regulated by the law and counterbalanced by the priestly judges. Since the judicial system seems no longer to have been under royal supervision in the theocracy after the judicial function of human kings had been curbed, the incorporation of priestly judicial function in the courts may have been intended to be an alternative to royal supervision, precluding the accumulation of discretionary power by judges. As a joint authority, judges and priests would be equally entitled to exert jurisdiction by interpreting and contextualising the laws in the case they were dealing with. It seems, therefore, that while Yahweh takes a human king's role to be that of a law-giver, the king's role as a supreme judge intervening in the justice system is shared between those priests who serve in the central court with their fellow judges. Thus the arbitrary and sporadic nature of royal intervention is replaced by regular cooperation between judicial and priestly judges.

Other reforming aspects of the judicial system can be seen in the disappearance of the judicial function of cultus (17:11). While priests may have participated in jurisdiction alongside judges, judicial oath, ordeal and manipulative priestly oracles are no longer promoted in the code, even though these measures were common in ancient legal cultures in circumstances where human reasoning could not deal with a case satisfactorily.[1] On the contrary, the judicial system was enhanced by

[1] This is viewed as a demonstration of the trend towards legal rationalisation, see Weinfeld, *Deuteronomy and Deuteronomic School*, 233-236; J. Milgrom, "The Alleged 'Demythologization and Secularization' in Deuteronomy," *IEJ* 23(1973): 158-59. For a study of the judicial role of the cultus, which also includes priestly manipulation of the lots, priestly rulings, and judicial ordeals, see Levinson, *Deuteronomy and the Hermeneutics of Legal Innovations*, 110-27. On the religious and

the increasing importance of evidence in the prosecution. Sound evidence and thorough inquiry are required, and a single witness is no longer sufficient in legal prosecution. Instead, two or more witnesses are required for judicial thoroughness and fairness (17:6; 19:15-20).[1] This judicial principle seems to contradict the reliance on a single witness in the prosecution of apostasy in chapter 13 (vv. 7-12). However, as Levinson has noted, the procedural safeguard of two witnesses (17:6) should not be read into Deut 13:7–12, where there can be no other witnesses.[2] In sum, the system of justice regulated in the code is characterised by the legislative position of law in the court system, by the establishment of regular judicial cooperation between priests and judges in the system of justice, by regular interaction between local and central courts, and by the rationalisation of judicial procedures.

b. Local Administrative Formalisation (16:18-20)

The code states that judges and officials are to be appointed in every town and tribe to formalise local administration. Technically, as Weinfeld points out, the law providing for the appointment of local judges is designed to fill the judicial vacuum in the provincial cities created by cultic centralisation, which would have ended the operation of local shrines and prohibited priests from the exercise of local judicial functions.[3] The localisation of state administration is thus in place of priestly local judicial functions. However, rather than passive adjustment being made to cultic centralisation, the reformed judicial system in effect demonstrates a significant conceptual transition of state administration compared to Egyptian theocracy. Unlike Egyptian priests, who functioned as the sole divine channel in various state and civil affairs, the administration of justice in Yahwistic theocracy is regulated by the written law and the major judicial function of priestly institution is replaced by professional judges. Thus the system of justice in Israelite theocracy was intended to be regulated by the written law from top to bottom and to be administered mainly by professional judges who incorporated the priestly judicial function.

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forensic function of oaths, see K. van der Toorn, *Sin and Sanction in Israel and Mesopotamia: A Comparative Study* (SSN 22; Assen: Van Gorcum, 1985), 45-55.

[1] For a review and analysis of the interpretation of the provision, see B. S. Jackson, "Two or Three Witnesses," in his *Essays in Jewish and Comparative Legal History* (Leiden: E.J. Brill, 1975), 153-171.

[2] B. M. Levinson, "Recovering the Lost Original Meaning of *wl' tksh 'lyw* (Deuteronomy 13:9)," *JBL* 115 (1996): 601–20.

[3] See Weinfeld, *Deuteronomy and the Deuteronomic School*, 234.

c. The Place of Private Justice

While the code regulates a brand-new system in detail, certain laws surprisingly indicate the adoption of certain kin-based traditions in the new system. Ambivalence can be seen in the law permitting the practice of blood revenge (19:4-6) and calling for the construction of three extra asylum cities to provide institutional protection for accidental killers (19:1-3, 7-10). We do not know whether self-executed justice in the code is an adoption of existing custom, or a reintroduction of former customary practices with the re-establishment of centralised state administration. It seems, however, that the newly institutionalised fugitive system as a part of state reorganisation stands together with the old customary practice in the code. These laws might have reflected the persistence of the practice of *talion* in Israel on the one hand (Exod 21:23-24) and constitutional adoption of the practice with new restriction for the exilic community on the other.

In a practical situation in which any standing army or policing system may have been forced to dissolve when the monarchy was subjugated to Babylon (609 BCE), there may have been a resurgence of private justice with the introduction of communal executing forces in the much smaller and self-contained communities in Jerusalem and the Diaspora. The code thus permits just self-executed justice on the one hand (19:11-13) and introduces certain measures to forestall unjust revenge on the other. Comparison between the laws of *talion* in the Torah also suggests that the *talion* has a strong literary sense in the early code (CC) and appears as a principle in the later code (DL).[1] The combination of new and old rules should therefore be interpreted in the light of exilic administration as a whole, rather than taking it as a literary reflection of social practice in different historical periods.[2] Likewise, the institutional role of elders in local communities should also be seen relevant to the new system.

d. The Role of Elders

Theoretically, the strong trend towards administrative centralisation and local judicial formalisation could have significantly reduced the judicial function of local elders. The code remains silent on the traditional elder's judicial role, while

[1] David Daube has noted that the concept itself was being developed in Israel, from literal to abstract approaches. See his *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 103-147.

[2] See the review by T. M. Wills, *The Elders of the City*: *A Study of the Elders-Laws in Deuteronomy* (Atlanta: Society of Biblical Literature, 2001), 19-31.

regulating his function as a local assistant to the formalised judicial system. Some scholars consider the judicial role of elders to have been a long-established tradition and thereby take the silence about them to indicate a continuing role for them in the new system.[1] Some other scholars take the elder's role defined in the code as a textual reflection of two historical systems prevailing in Israel. However, argument based on a silence in the code seems mistaken in the new power structure that required a series of readjustments rather than a mere preservation of existing traditions. Moreover, since the old monarchic system had collapsed and the code was intended to constitute a brand-new system for the exilic communities, the elder's role had to correspond to the new ideological, political and administrative framework. While the code regulates the major judicial role of the elder as a local assistant rather than a judge in official investigation of local crime (21:1-9) and in capturing unjust killers (19:11-13), it seems likely that his moral and communal role remained untouched, while his previous judicial role was automatically taken away by the newly appointed local judges. This would include settling marital and minor family disputes within the community (21:18-21), and providing an informal policing force for formal judicial action, such as executing rebellious sons (21:18-21) and adulterers (22:1-29), and capturing killers locally (19:11-13). It seems that, as a local leader, the elder had communal responsibility[2] both for curbing private justice and for executing criminals as prescribed either by the law or by judges (21:18-21).

A particular question has been raised in modern scholarship as to the elder's role in assisting parents to deal with their rebellious and unchaste children. This has to be interpreted in line with the elder's general role regulated in the code. First, rather than stipulating that all rebellious children must be uniformly beaten to death by the community without differentiating the level of rebellion, as the state-regulated measure decreed, the laws were probably intended to provide a final and legal resolution when all other domestic options had run out in the community. It remains a puzzle whether the laws simply institutionalised a well-known existing custom or whether it was intended to reform an existing custom by ruling out a customary parental right to kill children of whom their parents disapproved. In either case, the law would reinforce an ideological recognition of parental authority that was widely recognised in ancient oriental communities. As a symbol of authority both in human

[1] Tigay, *Deuteronomy*, 159.
[2] See LH 195, 192-93, 168-169; and Wills, *The Elders of the City*, 168-69.

society and in universe, parents were understood as a representative of authority and order established in the household. Defying the very symbol of that authority would have meant posing a threat to the system as a whole. Correspondingly, taking measures to sustain the familial order and honour would be considered just as necessary as state mechanisms for maintaining social order. In this ethnic and cultural context, the offences committed by an unchaste daughter and by a rebellious son are equally serious, and both are equally unacceptable (Deut 22:13-21).[1]

Further, we should note that the merciless punishment prescribed for rebellious children is equally applied in the code for the sin of apostasy, the very sin against Yahweh's exclusive kingship (13:1-18). Each offence is dealt with by the death penalty, administered by communal force led by the elder. When one looks closely, these seemingly totally different offences in effect bear a striking similarity to each other, not only in the punishment itself, but also in the nature of the offence as defined in the code. With a repeated explanatory phrase following the prescription of the punishment in each case, וְכָל־יִשְׂרָאֵל יִשְׁמְעוּ וְיִרָאוּן "all Israel shall hear and shall fear" (13:11; 21:21), the law seems to maintain the authority of parents in a household as equal to Yahweh's sovereignty over the nation. While the sin of worshipping other gods is treated as political and religious treason, rebelling against parents is high treason committed within a household.[2] On the same principle, both are criminalised as evil, posing a vicious threat to the identity and very existence of the community; the community as Yahweh's people is thereby obliged to purge the sin from among them in order to serve as a deterrent to others.[3] In these contexts, a local elder as the head of the community would have been responsible for handling first-handed information for legal prosecution and for providing communal force for legal execution. Thus, the elder's role as communal leaders providing moral support for the community and organising communal force in assisting state administration

[1] For a summative explanation, see Tigay, *Deuteronomy*, 476-77; also see J. P. Burnside, *The Signs of Sin: Seriousness of Offence in Biblical Law* (JSOTSup 364; Sheffield: Sheffield Academic Press, 2003), 37-78. For a recent debate, see Joseph Fleishman, "The Delinquent Daughter and Legal Innovation in Deuteronomy xxii 20-21," *VT* 58 (2008): 191-210; and Meir Malul, "What is the Nature of the Crime of the Delinquent Daughter in Deuteronomy 22:13-21? A Rejoinder to J. Fleishman's Suggestion," *VT* 59 (2009): 446-59.

[2] This ethos is also embodied as the sixth commandment in the Decalogue: "honour your parents", which has long been realised in scholarship as corresponding to the exclusiveness and absolute power of Yahweh. The position of parents in relation to their children seems to be placed in parallel with Yahweh's authority over the nation; honouring parents is apparently seen as an acknowledgement of Yahweh's sovereignty over individuals, the nation, and the universe.

[3] D. L. Christensen, *Deuteronomy 1:1-21:9* (WBC 6A; 2nd ed; Nashville: Thomas Nelson Publishers, 2001), 276.

Summary and Conclusion

The system of justice in the code appears to be the major component of state administration in relation to the position of law, to the cooperation of governing institutions and to the local leadership. The network of state administration is well formulated and integrated, from the central court to local judicial administration. The separation between civil and religious institutions, and integration between state administration and certain traditional practices indicate the trend towards legal rationalisation and formalisation on the one hand, and the innovation of state administration in response to exilic circumstances on the other. The occurrence of old traditions in the code cannot therefore be simply regarded as a reflection of two different historical systems, but as the adoption or reformation of certain traditions in the new exilic context. The linked and rational changes made in the constitution show the practicality of the system, which was intended to be implemented in exilic communities which had been broken down into small groups and deprived of certain political and military powers in their internal administration. Correspondingly, the legal system regulated by the code should be seen in line with the new political and ideological structure of the nation as a whole.

2. Law and the Institution of Priesthood (18:1-8)

Priestly responsibilities in the cultic realm are well defined and illustrated in the PL in the Torah. The main concern of the DL appears to be the constitutional position of the institution of priesthood in the new system. According to Tigay, the laws indicate several reforming aspects in the priestly system in accordance with the cultic centralisation. Those Levite priests who used to be supported by landed estates in local shrines now have to be sustained by offerings made to Yahweh in the central sanctuary (18:1-5). On the other hand, the priesthood is no longer restricted to

Aaron's descendants, but open to all Levites (18:1).[1] Those Levites from rural areas who have lost their income at local sanctuaries are entitled to serve in the central sanctuary and share equally in certain portions of the offerings (18:6-8). However, this kind of employment may not have been on a regular basis. Those who were without employment, including those who were unable or not permitted to serve in the central sanctuary as reflected in Deuteronomistic account of Josiah's reform,[2] presumably had to rely on other family resources and local charitable support (18:8). On the other hand, these remedial changes would have affected the benefits of those tenured priests in the central sanctuary, as Tigay has noted.[3] In this regard, the code appears to be formulated with an awareness of the huge effect on priestly personnel caused by cultic centralisation. Once again, the system was not perceived as a utopian programme, but attempts to resolve a series of consequences that would have followed state cultic reorganisation and personnel reallocation.

Apart from cultic duty, priests seem also to be engaged in teaching and reading the Torah as the custodians of the Torah in the community. Lohfink suggests that in the new system the priests may have been occupied in providing education for the rising generation and reading the Torah and performing liturgy at national festivals (31.9-13).[4] It is possible that those priests who had previously served at local shrines were mostly redeployed to teaching the law in the community, since the code promotes education in the law on a national scale and on a daily basis. This may also connect with the interpretation of law in the judicial sphere in both central and local courts (17:9), and led to the flourish of scripture reading in Jewish worship and education. However, the priestly privilege of communicating with the god seems to become the characteristic of the function of a prophet in the constitution.

3. Law and the Office of Prophets (18:15-22)

The code legitimises the authority of prophets as an institution, as the sole channel for revealing the divine will, while forbidding inhuman child sacrifice and

[1] Compare Lev 7:28-36 and Num 18:9, and the comments and review of scholarship in Tigay, *Deuteronomy*, 170 and notes 3.4.5.
[2] In the Josianic reform some local priests appear to be disqualified from service at legitimate sanctuaries (2 Kgs 23:8-9).
[3] Tigay, *Deuteronomy*, xxii.
[4] Lohfink, "Distribution of the Functions of Power," 349.

various forms of superstitious soothsaying and sorcery (18:9-22).[1] Prophets thus hold a specially designated office, which is considered to be comparable to Moses' role as mediator (18:17-18). However, a number of scholars have pointed out a different implication of the law. N. N. Lohfink considers the prophetic office as Yahweh's representative that could have replaced the legislature.[2] E. Otto, on the other hand, maintains that Yahweh's will is enshrined both in the Torah and the on-going prophetic oracles; and the relationship between written law and prophecy should be left open in the recognition of Yahweh's kingship.[3] Christa Schäfer-Lichtenberger also sees the relationship between king and prophet as the key feature of the theocratic government and rightly points out that while the contraction of royal authority corresponds to a reciprocal realignment of prophetic authority, the office of prophet, like the king, is equally under the absolute authority of the Torah.[4] This, indeed, can be verified by the constitutional position of the law in the theocratic system and by those rules regulating the credibility of prophecy (18: 15-22). Thus, in a context in which the legislative status of the written law had been firmly established in the code and where Moses' judicial role already had its counterpart in the system of justice, the function of prophecy would no longer produce new law, nor replace the function of the established law. In this regard, the prophetic office would rather complement the written laws by responding to ongoing national or international affairs. Apparently, *nāvi'* in this textual context is understood as a messenger sent to announce the word of Yahweh to the community. In this sense, the prophetic office was not a religious institution, but a political institution designated to be a monitor of various state affairs in the theocratic system.

The prophetic role in politics can in fact be seen from the original meaning of the term. Modern scholars have connected the term *nāvi'* with the Akkadian verb *nabû*, "to call" or "to designate" which, in effect, can be found in the recovered prologues of the cuneiform codes, in which both King Hammurabi and Lipiṭ Ištar claim to be called by the council of gods to rule their empires. Evidently, the term

[1] For the interpretation of these terms see Tigay, *Deuteronomy*, 172-75.
[2] Lohfink, "Distribution of the Functions of Power," 349.
[3] E. Otto, "Von der Gerichtsordnung zum Verfassungsentwurf: Deuteronomische Gestaltung und deuteronomistische Interpretation im 'Ätergesetz' Dtn 16,18–18,22," in *'Wer ist wie du, Herr, unter den Göttern?' Studien zu Theologie und Religionschichte Israels. Festschrift für Otto Kaiser zum 70. Geburtstag* (ed. Ingo Kottsieper et al; Göttingen: Vandenhoeck & Ruprecht, 1994), 142-55.
[4] Schäfer-Lichtenberger, "Der deuteronomische Verfassungsentwurf: Theologische Vorgaben als Gestaltungsprinzipien sozialer Realität," in *Bundesdokument und Gesetz: Studien zum Deuteronomium* (ed. Georg Braulik; HBS 4; Freiburg: Herder, 1995), 105-18.

nāvi' derives from a broader social and political context than the narrow religious setting of the HW. A number of scholars have also found a parallel between the status of a prophet and that of imperial ambassadors in the ancient Near East. I. S. Holloday has noted that neo-Assyrian kings usually sent ambassadors to subjugated nations in order to guarantee the implementation of imperial policies. Thus the ambassadors who were empowered with imperial authority could act as the messengers of the overlord-kings and as imperial superintendents who gave orders to the small nations. The similarity between the prophetic formula, "thus says Yahweh", and the opening formula of Neo-Assyrian royal letters, *amāt* (or *abīt*) *šarri ana*, "the word of the king to..." is thus understood to be evidence that prophets had a status similar to that of a royal ambassador.[1] In this regard, the office of prophet in the theocratic system in effect represents King Yahweh's new orders given to complement the written law, thereby monitoring on-going state affairs and public moral life.

While the constitution elevates the office of prophet as the most authoritative institution in the new system, it also attempts to forestall the misleading of false prophecy by setting criteria for discerning true and false prophecy. The authenticity of prophetic oracles has to be tested by several principles: prophets have to be called by Yahweh (18:15); prophets must speak in the name of Yahweh (18:20); and the authenticity of a prophecy can only be established with its fulfilment (22). These elements might have resulted from a constructive reflection on the prophetic function. Again, the office of prophet can be seen as a constitutional remedy to the human fallibility exposed in the Deuteronomistic interpretation that true prophecy in warning of the imminent downfall of the nations was seen to be largely ignored or even rejected by authority. Thus the laws distinguish the primary role of the office of prophet as that of Yahweh's messenger and spokesman, responsible for true prophecy. The legalisation and formalisation of the prophet's function suggests that the new system was carefully designed to offer a better system than the monarchical one by designating prophets as a monitoring institution in the governing system. Although the code does not further define the function of a prophet as the moral consciousness of the nation, it is possible that the code takes the moral role of prophets for granted, as Tigay suggests.[2] As state law, the code is primarily

[1] Rabshakeh (Isa 36-37) is seen as an ambassador carrying out the king's mission to those nations. See I. S. Holloday, "Assyrian Statecraft and the Prophets of Israel," *HTR* 63 (1970): 29-52.
[2] Tigay, *Deuteronomy*, 176-78.

concerned with the legal position of the institution of prophets rather than its general socio-moral function, as seen in the elder's role.

Summary and Conclusion

Evidently, the code regulates the governing system and is particularly concerned with the constitutional relations between the sovereign and the subject people, the position and practice of state religion, and the responsibilities and obligations of each governing institution. They were formulated on the one hand to be in accordance with the concept of Yahweh's kingship, and on the other to deal with a series of consequences that might follow the transformation of the power structure in the theocracy. The ideological elements in the code by no means diminish the function of those laws in this regard, but orientate and characterise the system. Thus, the composition of the code cannot be taken as a utopian programme that took no account of the actual socio-political circumstances of the exiles, but as theocratic legislation that was intended to constitute an ideologically acceptable and administratively workable governing system for the exiles.

E. The Legislative Position of Law in the Theocracy

The legislative position of the law would lead to the transformation, not only of the legal system, but also of the concept and function of law in society as a whole. Linked adjustments have to be made in accordance with the establishment of the legislative position of the law in the theocracy. First and foremost, the legislative status of the law would require the publication of law on a nation-wide scale and the acquisition of common knowledge of the law by the majority of the population. Secondly, the legislative position of the law would lead to the rapid development of law quantitatively and qualitatively, as law has to regulate everything for society other than merely for the governing system. Thirdly, the mechanism of the state has to guarantee law enforcement in order to maintain the legislative position of law in society. We shall therefore test the legislative claim of the Hebrew codes in these aspects.

1. The Publication of the Law

If a law was meant to be enforced in a regulated society, the publication of law would be essential for its development and enforcement. The correlation between the publication of law and law enforcement seems to be well recognised in the ancient Near East, as we can see from the prologue-epilogue frame of the cuneiform codes, which articulates the royal promulgation and monumental publication of these ancient codes (see chapter 2.B.1). However, since the whole position of the law within a monarchical power structure was under the sovereignty of the current king, the scale of publication of the law would have varied, depending on whether the king was interested in the law and the legislative status of the law could not be consistent within such a society (see chapter 3.C).

The publication of law in the Torah, nevertheless, appears to be mandatory on a national scale. The Hebrew codes apparently are distinguished by a distinctive manner of publication and a family-based learning system. Each code is clearly given to the whole congregation no matter how the laws would be related to their ordinary life. They were said either to be directly promulgated or written by King Yahweh (see chapter 4.D.4), or to have been recounted and interpreted by the mediator Moses (Deut 4:1-8, 44, 27:2-8). Even the PL, which is considered by many modern scholars to be the work of "a close elite circle isolated from the people, inimical to the folk religion, [and] concerned solely with the holiness of the sanctuary", [1] was explicitly meant to be given to the whole congregation of Israel in the Torah. The formula with its variations, וַיְדַבֵּר יְהוָה אֶל־מֹשֶׁה לֵאמֹר דַּבֵּר אֶל־בְּנֵי יִשְׂרָאֵל לֵאמֹר, or שְׁמַע יִשְׂרָאֵל (Deut 6:4) is in fact used repeatedly in the priestly texts as the opening of presentations of law (Lev 1:1-2; 4:1-2; 11:1-2; 12:1-2; 15:1-2;17:1-2;18:1-2; 19:1-2; 20:1-2; 23:1-2; 24:1-2; 25:1-2; 27:1-2). The formula and its parallels in the Torah establish the commandments as the laws for the nation of Israel as a whole, and distinguish the texts from those parental instructions given to the "son" in the wisdom literature, שְׁמַע בְּנִי מוּסַר אָבִיךָ וְאַל־תִּטֹּשׁ תּוֹרַת אִמֶּךָ (Prov 1:8, 10; 2:1, 3:1, 11, 21, 4:1, 10, 20, 5:1; 6:1, 20, 7:1, 24). And violation by individuals of the constitutional laws concerning the exclusiveness of Yahweh's kingship is seen as the severest sin that has to be purged

[1] See Milgrom, *Leviticus 1-16*, 15-16.

In relation to the publication, observance of the whole law is seen in the Torah as the key both for successful repossession of the Promised Land and the establishment of Israelite statehood (Exod 23:20-33; 34:11-12). With their concerns for these constitutional aims, the publication of law and education in law appear extremely relevant to the survival and striving of the nation. Unfortunately, modern scholars often set the educational function and the legislative position of the Hebrew law up against each other (see chapter 2.A.1), and the didactic elements added to the Hebrew codes are taken as evidence for the argument in favour of the text having had an educational purpose and against its having had a legislative function. In fact, education in law can be seen another dimension of the legislative function of the law in relation to law enforcement.

First of all, it would be wrong to assume that the function of the ancient codes was merely for political propaganda or for the legal education of scribes, and that was irrelevant to the interests of individuals in society. In spite of the relatively limited scale of ancient publication of and common education in law, the process and purpose of learning law seems to have been fundamentally the same for the ancients as in modern times. Both are stimulated and driven by the practical need for legal litigation. Modern media may have enhanced the public's common knowledge to an extraordinarily high level, but this certainly does not mean that the public are familiar with all kinds of law in their national systems. On the contrary, seeking professional assistance and representation have become an indispensable part of modern litigation because of the complexity of modern law and the highly institutionalised modern legal system. Even legal experts can only be specialists in one particular area of modern law. However, the advances made in modern legal systems are not meant to frighten people into using the courts, but to encourage them to seek fairness with professional assistance within a modern legal system.

Likewise, the fact that the majority of the ancient population were illiterate did not mean that the published laws had no meaning for them at all. Although they might not be able to read the laws themselves, they could have heard and sought legal help from learned people in their own communities. We have seen that in spite of the selectiveness and separation of published laws in ancient Greece it was not

difficult for the Athenians to find relevant laws for litigation via the network of the community (see chapter 2.B.1). Thus, although we do not have sufficient information about the legal system either in Mesopotamia or in Israel, the publication of the ancient law-codes meant that the laws were effective for contemporary people, and could encourage the ancients to seek justice in the courts by gaining legal help from their learned fellows. In view of this, it is easy to understand why the Hebrew codes emphasise the importance of learning law and devise a system of education whereby the public can achieve a full scale of observance of the law.

The laws are designed to be learnt as a part of daily life for the majority of citizens, and to be read publicly every seven years in the ceremony of covenant renewal (31:9-13). The common ancient learning method, learning by heart and copying chanting, are adopted in the learning system. According to Carr, many ancient texts were not written in a way that they could be read easily by someone who did not already know them well, and it was common that some ancient students underwent an instruction in classic writings that they did not understand; only some of them went on to achieve a higher level of understanding of texts they earlier had written or performed without understand.[1] However, in the Hebrew context, discussion of the meanings of the law is considered an indispensable part of the learning process for most households (Deut 6:7-9). In this form, individuals in society would not only become familiar with the letter of the law, but could also understand and commit to the meanings of the law via active interaction with the sovereign god Yahweh within and between households (Deut 6:4-9).

This learning practice seems to have its tradition in Israel. Biblical and archaeological evidence for the existence of large scale scribal schools in Israel appears to be very weak, early education or training is understood by modern scholars as a system of small-scale apprenticeships within hereditary families of scribes.[2] The learning system envisaged in the code seems to reflect this tradition of small-scale learning within the individual household, which would be practical and workable for a general education in law in the theocracy.

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[1] See Carr, *Writing on the Tablet of the Heart*, 4-5, 75.

[2] R. N. Whybray, "The Sage in the Israelite Royal Court," in *The Sage in Israel and the Ancient Near East* (ed. J. G. Gammie and L. Perdue; Winona Lake, IN: Wisenbrauns, 1990), 133-39; S. Weeks, *Early Israelite Wisdom* (Oxford: Clarendon Press; New York: Oxford University Press, 1994), 132-156.

On the other hand, reading the law publicly every seven years in the ceremony of covenant renewal can be taken as a public confirmation of the position of law, of common values embodied in the law and of public education in law. Analysis of the formation of the concept of covenant in Israel suggests that it knows nothing of any ceremony of covenant renewal in association with the prescribed reading of the law in Israel (see chapter 6.A).[1] Public reading of the law thus seems to be a legal innovation in the composition, motivated by the idea of constituting a nation whose people recognise their political and religious identity as Yahweh's people, and fully understand the meanings of the laws, thereby voluntarily observing the laws as token of their loyalty to the god and king, Yahweh. J. W. Watts has noted that the laws presented in Torah are designed in the form of Israel's tradition of reading texts in public.[2] The addresses, motive clauses, repetitions and variations of laws, and the variety of narration are understood as literary devices for the very rhetorical aims of instruction and persuasion that make the passage memorable and hold the audience's attention.[3] Thus, the DL, which reflects the work of internal exegesis within the Torah, the exhortation, motive clauses, paraphrase interpretation of the laws, were to realise the ultimate goal of making the law relevant to society.

Apparently, the model of learning the law in the DL has no parallel either in the legal history of the ancient Near East, or in the Israelite monarchic education system.[4] Certainly, the instigation of such compulsory education in law had to be supported and supervised in the individual towns. While the old cultic system was being replaced by a new centralised system, the learning system may have been designed in line with administrative localisation and formalisation in the theocracy (Deut 16:18-20). It can be speculated that the officially appointed local judges may have been responsible for educating local elders and heads of households, and those priests and Levites who had lost their jobs in local shrines and could not find new ones in the central sanctuary may have committed to the enterprise of education in

[1] Also see Perlitt, *Bundestheologie im Alten Testament*, 123.
[2] J. W. Watts, "Rhetorical Strategy in the Composition of the Pentateuch," *JSOT* 68 (1995):3-22; idem, "Public Readings and Pentateuchal Law," *VT* 45 (1995): 540-57; idem, *Reading Law: The Rhetorical Shaping of the Pentateuch* (Sheffield: Sheffield Academic Press, 1999), 32-60.
[3] Ibid, *Reading Law*, 61-88.
[4] D. W. Jamieson-Drake, *Scribes and Schools in Monarchic Judah: A Socio-Archaeological Approach* (Sheffield: Sheffield Academic Press, 1991); A. R. Millard, "An Assessment of the Evidence for Writing in Ancient Israel," in *Biblical Archaeological Today: Proceedings of the International Congress on Biblical Archaeology, Jerusalem, April 1984* (Jerusalem: Israel Exploration Society, 1985), 301-12.

their local areas. In this way, it would be possible for most people to learn the essential elements of the code that were most relevant to individuals, such as the Ten Commandments and the principles of dietary law. Once the newly formulated laws were established as common social practices, it would be easier for the next generations to follow. Accordingly, the code's introduction of the education model to ordinary households strongly suggests that the law was intended to reshape the community to fit the fundamental values recognised by the exilic authority, who saw in the newly reformulated law a workable learning model to promote education in those values.

However, the code gives no further information to act as a blueprint for the educational network in the system; however, the learning system can be seen from post-exilic communities, in which reading and interpretation of the Torah became a routine in communal worship and gatherings. According to the book of Ezra, reading and interpreting the law was an important part of public gatherings in the post–exilic community, which was not only concerned with the recognition of the legislative status of the law, but also actively involved in public education in law and making law relevant to the community (Ezra 10, Neh 13). It seems that the public meetings would provide the congregation with professional and authoritative interpretation of the law for purposes of national unification and solidarity. Along with prayers, confession and repentance in the post-exilic community, learning law would not be merely a matter of becoming familiar with the words of the laws by means of professional interpretation of them, but it was also concerned with the intellectual and spiritual dimensions of the law (see chapter 6.B.2).

Unlike modern laws which are totally a matter of external restraints defined by judicious words, the observance of law in the Hebrew context is not simply concerned with the well-being of the community, but also with good relationships with the sovereign and with one's fellows. By means of internalisation of the laws, the inner beings of individuals could be transformed and their intellectual horizon enlarged by the meanings of the law. Such interaction is seen as living, mutual, and essential to maintain a harmonious relationship between the sovereign and the subject, and between the individuals (Deut 6:4-9). Thus the Torah constitutes a type of law different from any known elite law in ancient times, one which was meant to be learnt and practiced by the majority of the population. In this sense, the laws perceived in the Torah are indeed constitutional law, and more than modern

constitutional law, they are meant to be upheld by the whole being of individuals and to shape the nation as a single being. Thus the mechanism of law and the sentiment of religion come together in the Torah to form a new religious entity whose values are embodied in the form of law, and a new system of law whose status and function are buttressed by religious force as well as by political mechanism.

2. Legislative Status versus Function of Law

It is a general trend in modern history of law to suppose that the establishment of an absolute position for the law leads directly to the rapid development and perfection of the law and of the legal system. While law is developed to meet various socio-political, economic, religious, ethical and humanitarian demands arising from different social spheres, the establishment of the mechanism of a legal system for law enforcement is considered equally important in any modern system. However, in spite of the fact that the legislative position of law has been widely established in many developed and developing countries, law enforcement appears to operate on different levels even within a single system, and there may be a substantial difference between the legal culture cultivated in totalitarian regimes and in democratised nations. It is also true that new law may encounter resistance from an old system or create a new unpredicted problem in society. In this regard, the legislative position of the Hebrew law established in the Torah would have led to the development of the law and the establishment of a socio-political mechanism; on the other hand, its influence within the exilic communities needs further investigation.

Apparently, in spite of the institutionalisation of the legislative position of the law in the Torah, the cultural diversity and political instability of the exilic communities may have impeded wide recognition of the code as Jewish constitution in general[1] and the process of establishment of the theocratic system in Yehud in

[1] Some scholars suspect the existence of a law-code in Israel prior to Persian period because no law codes or royal edicts have been recovered from a Jewish military colony in Elephantine, while private contract and court record can be identified from a rich crop of Aramaic papyri and ostraca recovered from there. See R. Westbrook, ed., *A History of Ancient Near Eastern Law* (vol. 2 Leiden: E. J. Brill, 2003), 863-81. This, however, may reflect the high autonomy of the military community on the one hand, and the slowness of the code in achieving wide recognition on the other.

particular.[1] While the reconstruction of the city of Jerusalem and of Yehud province by post-exilic community on the scale suggested by biblical texts may remain archaeologically unsupported,[2] the books of Nehemiah and Ezra both reflect a gap between recognition of the legislative position of the law and its enforcement in a newly formed community.[3] Not all returnees seem to have been familiar with or to have abided by the laws recognised by the elite who were in political and religious power in the Yehud community.[4] The actual existence of mixed marriages would force the authorities to make a decision, either that the laws had to be updated to meet the demands arising from the newly formed community, or that exceptions would have to be made for those who did not know the laws and had lived under a different legal system prior to the return to the homeland. However, the post-exilic leaders apparently took a legalistic approach towards the implementation of the new system. The mandatory imposition of the laws in the community would have been unfair to those people who were unfamiliar with the laws reformulated by Judean elite. Although the laws concerning cultural demarcation in the DL were likely to preserve the remnants of the nation politically, culturally and ethnically in the face of Babylonian colonisation and immigration policies, law enforcement had to consider a social reality which appears to have moved beyond the initial context in which the law was formulated. The failure to resolve the conflict between the idealism of the law and the general ignorance of the law in the post-exilic community reflects a common legal struggle which often takes place during the establishment of a legislative position for the law; on the one hand, such a society is not ready to be ruled by constitutional law, but on the other the law needs to be updated to meet social need.

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[1] R. Albertz, "The Thwarted Restoration," in *Yahwism after the Exile: Perspectives on Israelite Religion in the Persian Era* (ed. R. Albert and B. Becking, STAR 5; Assen: Royal Van Gorcum, 2003), 1-17.

[2] See the review and analysis made by Israel Finkelstein, "Jerusalem in the Persian (and Early Hellenistic) Period and the Wall of Nehemiah," *JSOT* 32 (2008): 501-20. Oded Lipschites has noted that the significant decline of Jerusalem and its environs reflected Babylonian policy towards the city which had never recovered until Hellenistic period. See his "Demographic Changes in Judah between the Seventh and the Fifth Centuries B.C.E.," in *Judah and Judeans in the Neo-Babylonian Perid* (ed. Oded Lipschites and Joseph Blenkinsopp,), 323-76.

[3] For a review of the interpretations of the law in the book of Ezra (7:14, 25), see R. W. Klein, "Ezra and Nehemiah in Recent Studies," in *Magnalia Dei*, *The Mighty Acts of God: Essays on the Bible and Archaeology in Memory of G. Ernest Wright* (ed. F. M. Cross et al; Garden City, New York: Doubleday, 1976), 366-68.

[4] For the Deuteronomistic roots of Judaism, see Timo Veijola's interpretation in his "The Deuteronomistic Roots of Judaism," 459-78.

This may find a parallel in Qin law in imperial China. The origin of Qin law had reformed the social and administrative system of former Qin dynasty (230-221 BCE) and brought remarkable economic prosperity and political success for the small kingdom. However, when the law was systematically developed and strictly enforced in the newly-expanded empire, it encountered fierce resistance from local elites whose interests had been damaged by the centralisation and experienced practical challenges in local courts. While the nation was worn out and torn apart by the numerous wars and by heavy taxation, further conscription, and a royal programme of building construction, the revolutionary advance of Qin law were apparently too radical to peoples who were accustomed to being governed by customary rules and by the laws made by their former kings prior to the forced unification. While the majority suffered politically and economically from the new state policies, the severity of Qin law and the legalism of Qin courts only made them suffer more from the centralised system. As a fatal consequence, the first dynasty of the empire was overthrown by rebellious peasants only thirteen years after its establishment (221-209 BCE).[1] Another consequence of this that had a profound influence on later Chinese legal history was that the model of the Qin legal system was no longer favoured by later dynasties.[2]

The legalism of early Judaism, therefore, reflects on the one hand the recognition of the legislative position of the Hebrew law by the Yehud community, and on the other their struggle to control the situation. But this certainly does not mean that the law was not made for implementation. Rather, the code of law which had been formulated within the context of a Babylonian colony had to be updated to cope with social developments in Persian times. The problem with the post-exilic elite was their ignorance of the development of law within the Torah and of the new social conditions under Persian rule.

Conclusion

Our analysis of the legislative position of the law in the Torah suggests that the transformation of the position of the Hebrew law was directly related to the

[1] Yì Zhào and Yì-Fēng Zhào, eds. *The History of Ancient China* (Beijing: High Education Press, 2002), 256-71. (in Chinese).
[2] Wallace Johnson, "Status and Liability for Punishment in Tang Code," *CKLR* 71(1995-96): 217-229.

conceptual and socio-political structure of Yahwistic theocracy, rather than to a pure philosophical development in the concept of law. While Yahweh's kingship appears in the system as the ideological, political and even administrative foundation for the reconstitution of the nation, the laws are enshrined as legislation regulating the governing system and society as a whole. The system is thus characterised by a significant decline of the office of human kingship, a rise in the legislative status and function of the law, and a distribution and balance of power between four major governing institutions. As the will of the divine king, the law is assumed to replace the actual function of a monarchical king as a law-giver and superior judge, while Yahweh is regarded as king of the society. Thus, the political and philosophical development of the Hebrew law appears to be in accord with the theocratic model perceived in the Torah.

Further, since all evidence within the code points to the composition and finalisation of the code having taken place between the death of King Josiah and the construction of the second temple, the purpose of composition can be best understood in an exilic context. Our study of the constitutional laws suggests that in spite of ideological elements within the theocratic law, the rules were formulated in the light of observation and consideration of social, political and even economic reality in the exilic communities, in which the code could not articulate collective political ambitions while under imperial Babylonian power, yet attempted to work out a system that would be ideologically and administratively suitable for the reorganisation of the nation. The recognition of such a legislative position for the law is further confirmed by the trend towards systemisation of the law in the Torah and the promotion of the publication of and education in law in Israelite society.

However, in spite of the establishment of a legislative position for the law in the Torah, the code which had been reformulated mainly by Judean elite within the Babylonian empire may not have been able to win wide acceptance among those who had settled in different regions. The disagreements and conflict within the post-exilic community in Yehud reflect the common legal struggle on the other hand, and the particular challenges from a newly-formed exilic community on the other. Correspondingly, the code neither reflects monarchical law, nor was it made for a utopian purpose; it was a code of law made for the exiles. Thus, the claim that the text is utopian in nature cannot be firmly established, though the suggestion that it was composed in an exilic context can be verified.

Conclusion

Modern critical study has discredited Mosaic authorship of the Torah and associated the formation of the legal texts with different formative stages of Israelite society. An interdisciplinary approach is also taken in recent study via the interaction with Assyriology and legal theories. The Hebrew legal texts are thus identified as ancient law-code parallel to the cuneiform law-codes recovered from Mesopotamia. In spite of this significant move, the study of the Hebrew law is not free from the problems inherent in each field. The imposition of modern concepts of law in Assyriology and the fundamental problems relating to classical source criticism and form criticism have been brought into the new field.

I thus reassessed the premises and assumptions that have been brought into both fields in the introduction and chapter one. While the introduction was particularly concerned with modern presuppositions about the concept of law and the court system, chapter one dealt with the problems that inhere in classical source criticism and form criticism. Correspondingly, each interpretive model perceived either in legislative or non-legislative interpretations was brought under close scrutiny. The review revealed how the non-legislative approach disregards socio-political factors in the formation of the text, and how the legislative interpretation treats the ancient codes straightforwardly as state law without differentiating the different stages of legal development within a system. I thereby proposed a new and moderate approach that would embrace different types of law, according to the basic meaning of law identified by modern legal scholars, mainly Austin and Hart. This new approach abandons suppositions based on modern, advanced legal systems to make allowance for the crudity and individuality of ancient laws. Instead of judging whether these ancient codes are “law” or “not law” as in previous scholarship, it explores what ancient laws were, how they could have developed and how they could have been codified as state law-code in their respective societies.

In order to examine the general legal culture in the ancient Near East as a starting point for the study of Hebrew law, a reassessment of modern scholarship in

Assyriology was made in chapter two. Instead of simply following or abandoning existing approaches, my analysis of the cuneiform codes was concerned both with the literary features of ancient rules emphasised in non-legislative interpretations and with the real character of the ancient laws revealed in legislative interpretations. While the literary features of the cuneiform codes were considered as of secondary importance in the nature and function of those ancient codes, and the character of ancient law taken as the more decisive factor for determining their function. The sanctions prescribed in the rules, the indication of legal and administrative development in the associated empires, the sophistication and reformation of customary norms in the cuneiform codes, especially the LH, were all further discussed. Thus, how the ancient codes represented a legal development from a society habitually ruled by customary norms to a centralised monarchic system with its associated values was revealed, such as in Old Babylon and in imperial China.

However, a better understanding of the legislative position and actual function of the ancient law-codes should not be limited to the analysis of the ancient rules themselves, but should also further explore the broader socio-political and ideological contexts of the ancient Near East, in which the texts of the law-codes came to be. In doing this, I explored in chapter three the prevailing concept of human kingship in relation to the concept of god both in Mesopotamia and ancient Egypt. While revealing the subtle ideological and political differences between Egyptians and Mesopotamians, the idea of kingship reflected in the recovered prologues and epilogues of the cuneiform codes were further examined in relation to the king's practical role as a legislator and as a superior judge in state administration. The codification itself was seen to indicate the increasing importance of law in state administration and reorganisation; and the systematic selection and codification of various rules from different authoritative sources suggested that the ancient law-codes were formulated in order to meet various demands arising from a developing society, such as introducing established imperial practices to the newly included peoples and introducing new laws for administrative centralisation. The codification of the LH was thus related to the significant changes in political power structure from a city state to a centralised monarchy and significant expansion in territory and in population under the leadership of King Hammurabi.

However, in spite of the establishment of the legislative status of the ancient codes, law enforcement could work at different levels under different leadership;

even within a single legal system, the extent of enforcement could differ in high courts and in local courts, as exhibited in the analysis of classical Athens and imperial China. The conclusion was thus reached at the end of the chapter that while the legislative status of the ancient codes could be established by royal promulgation and publication of the codes, the function and validity of the ancient law depended on individual king's own various levels of interest in the laws. Thus, the general position of law in a monarchical system could never have been respected as an asset as in modern democratic system, but was a means of governance subordinated to the kings' unrestricted power.

Against the background of this general legal culture reconstructed from the ancient Near and Far East, I continued to investigate the codification of the Hebrew codes in Israelite society in chapter four. Since the present form of the Hebrew codes in the Torah shares literary conventions and concepts of law in common with the cuneiform codes, I thus placed the development of the Hebrew law at the juncture, where direct political, administrative, and literary contacts would be possible with those empires which had inherited the cuneiform legal culture, and where Israel's own statehood reached a point which would demand a codified law–code to meet the challenges of internal administration and external globalisation. The development of the Hebrew law was thus associated with state reorganisation in both monarchies, particularly in the eighth century BCE under Neo-Assyrian policies of globalisation. The final locus of the codification, however, was understood to be in Judean monarchy which had included diverse populations from the North after the political destruction of that monarchy in 722 BCE, and experienced political restoration under the leadership of pro-Assyrian kings. The significant territory and population expansion, rapid economic growth and administrative centralisation in response to Neo-Assyrian globalisation and urbanisation would be an ideal climate for the systematic codification of a Hebrew law-book in Israel.

The reassessment of modern scholarship in dating the DL is particularly important to the studies of Hebrew law in relation to Israel's self-understanding in different periods. In the context that monarchical law has never achieved a status that could have suppressed any human authority in society, the significant legal leap from monarchical law to constitutional law achieved in the Torah cannot be connected with King Josiah. It can be better associated with the exilic elite, who would have reformulated those monarchical laws in a new political and ideological framework.

In the circumstances that the nation had lost its king, state temple and territory all together with the destruction of the monarchy in 586 BCE, the new system perceived by the exiles reflected their understanding of past monarchy and future national restoration. As the office of human kingship was no longer considered important, the patron god of Israel, Yahweh, took on the qualities of a human king, and the position of the law was enshrined as divine law, directly given by the divine king, Yahweh. Accordingly, the Deuteronomistic narrative regarding the legislative position of the law in King' Josiah's reform can be better read as ideological, than as historical or as fictional. Thus, altogether the Hebrew codes reflected in the Torah might have had their origins as state law in the Israelite kingdoms, the transformation of these monarchical laws into constitutional laws in the Torah reflects an exilic ambition to restore the broken nations, socio-politically and ideologically in the form of a theocracy. A better understanding of the nature and function of the Hebrew law in the Torah can be gained in the conceptual context of Yahweh's kingship and of the power structure regulated in the Torah.

My investigation of the formation of Yahweh's kingship in Israel in chapter five further demonstrated that the idea of Yahweh taking on the qualities of human kingship was not the characteristic of the Israelite monarchy, but was an exilic innovation. To be sure, certain distinctive features of Yahweh's kingship had already been formed in monarchical Israel, perhaps through the nationalist movements against foreign political, economic and cultural domination, which emerged first in the northern and then in the southern monarchies, and through the corresponding prophetic teachings which emphasised Yahweh's unique position as the state god and the importance of religiosity in relation to social justice and compassion. Although the royal reorganisations under the leadership of those Judean kings which were in the DtrH cannot be seen as purely religious, these movements nevertheless could have laid political and ideological groundwork for the preservation and development of Yahwism from the end of Judean monarchy onwards. The culmination of Yahweh's kingship in universality and nationalism in the HW suggests that exilic experience had inspired the nation to perceive Yahweh's universal kingship both in the divine and in the human world, in order to distinguish Yahweh from common concepts of divine kingship in the ancient Near East. Accordingly, Yahweh takes on the qualities of human kingship as a better alternative to the former human kings in the Torah, thereby reconstituting the nation as a new political and religious entity.

In this new ideological and political framework, the concept of covenant can be seen as a feature of the new system which united the broken nation with a new understanding of the relationship between Yahweh and Israel and of the relationship between fellow Israelites after the political destruction of the nation. While the concept of a new covenant was perceived by the prophets to mark a new beginning for the exiles, the concept of the old covenant was also formulated, to interpret the previous relationship during monarchical times, so that the political destruction of the nation could be interpreted as the result of Yahweh's punishment for the ways in which it had been broken under the monarchy. Thus, covenant and law came together in the Torah both to redefine the relationship between Yahweh and his people Israel, and to enable the broken nation to remain in that relationship. While the law substantiated the meaning of the covenant, the covenant enriched the law with religious sentiment and commitment. Accordingly, covenant in the Torah was not intended to diminish the function of the law, but to strengthen the system of law along with the governing system regulated by law. While the governing system regulated in the DL would be responsible for a regular enforcement of the law, as theocratic law, the law required covenantal commitment to the sovereignty of Yahweh and to his law. Accordingly, the covenantal features of the Hebrew codes, such as admonitions about observance of the law, or humanitarian appeals for social restoration enriched the literary and conceptual features of the Hebrew codes.

In order better to understand the theocratic system regulated in the DL, the final chapter was dedicated to an analysis of the governing system which was intended to be constituted in the circumstances of the Exile. While Yahweh's kingship ideologically underpinned the system, the policies regarding the construction of a single central sanctuary and associated personnel, the low position of the office of a human king, the elevation of written law as constitutional law in society, and the systems of justice in relation to the cooperation and integrity between different governing institutions, between central and local administration, and between traditional practice and centralised system, all reflect the fact that the new system was formulated with political sensitivity towards Babylonian suzerainty and with practical consideration of the exilic circumstances. Thus, by assimilating concepts of law prevailing in ancient Near East, the exilic elite had developed their law into a distinctive ideological and socio-political system, and while contemporary Athenians cultivated direct democracy in place of a monarchical system, the exilic

Israelites sought a constitutional monarchy for the reconstitution of the broken nation whose monarchy was forced to dissolved by foreign power. Accordingly, utopian interpretations of the Hebrew law may accurately identify its late date, but cannot do justice to its constitutional nature and function.

My analysis of Hebrew law in the Torah has manifested how law developed initially in a monarchical structure along with the development of Israelite statehood in general and state reorganisation in particular; but also how the movement from monarchical laws to constitutional law in the Torah reflected a conceptual and socio-political transformation of the nation after its political destruction in 586 BCE, within a situation that demanded a political reconstruction and a new ideological orientation. This interpretation of the development of the ancient laws differs from current approaches through its consideration of the political power structures, and their corresponding significance for the conceptualisation of law. While ancient laws are generally understood as practical political measures in response to various social needs, law in a theocratic system is different from those laws formulated in a monarchic system or in a democratic system. The position of law in each system has to be distinguished in order better to understand the variety and diversity of the ancient laws.

Later Judaism evidently lost sight of this history, and fossilised the text of the law, without investigating the implications of a transformation from human made law to divine law. As a consequence, rabbinical interpretations harmonised the laws within the Torah instead of interpreting them historically and a legalistic approach was taken towards the application of law in Jewish communities. This inevitably created numerous problems with the interpretation and application of the laws in various and different social contexts. Modern interpretation of the individual laws in the Hebrew codes, however, has to consider the political and ideological structure regulated in the Torah, on the one hand, and legal development within Israelite society on the other. Any comparison between similar laws from different systems, moreover, has to pay due attention to the general position of law within individual systems and the different social, political and religious contexts in which laws are formulated and applied.

Glossary

Appeal: An application for the judicial examination by a higher tribunal of the decision of any lower tribunal.

Apodosis: The concluding clause of a sentence, the consequent clause in a conditional sentence, as in a casuistic rule.

Apodictic rule: A rule which express positive and negative command, formulated in imperative form, and often without the prescription of sophisticated punishment or resolutions as casuistic rules.

Case law: The body of law set out in judicial decisions, as distinct from statute law.

Casuistic rule: A rule which is formulated as a conditional sentence, opening with the description of a certain judicial circumstance (protases) and completes with the prescription of a legal resolution (apodosis).

City-state: A form of governance as an independent state consisting of city and the area around it.

Civil law: The rules designed to settle private disputes over non-serious criminal damages and injuries.

Common law: Rules of law developed by the courts as opposed to those created by statute.

Constitution: The rules and practices that determine the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state.

Court of record: A court in a modern sense whose acts and judicial proceedings are permanently maintained and recorded.

Criminal law: Rules of law dealing with serious offences.

Cuneiform writing: an ancient writing system developed in different languages in Mesopotamia, Assyria and late Persia.

Customary rules: Well established social practices and commonly held values within a particular culture, which were often traditionally and habitually conformed by local inhabitants without the reference of an authoritative text. In legal sphere, they are usually understood to be different from, or even opposed to, the written law regulated by a central government.

Discretionary judgment: The judicial power to decide what should be done in a particular situation which often beyond the scope of established rules.

Governance: The activity of governing a county or controlling an organisation.

Judgement: A decision made by a court in respect of the matter before it.

Jurisdiction: The practice of legal authority by a court.

Jurisprudence: the scientific study of law.

Legalistic approach: An extremely strict attitude towards the letter of law and law enforcement.

Legislation: The whole or any part of a country's written law.

Norms: Standards of behaviour which are typical of or accepted within a particular group or society.

Precedent: A judgment or decision of a court, used as an authority for reaching the same or a similar decision in subsequent cases.

Positivist approach: dealing with issues or matters based on the things can be seen or proved rather than on ideas.

Protases: the first or introductory clause in a sentence, as in a conditional sentence.

Royal decree: an order or decision made by a king or queen.

Statute law: The body of law, made by the Crown in ancient times, or contained in Acts of Parliament in modern democratic system, differentiated from case law in modern jurisprudence.

Talion: Retaliation in the Mosaic, Roman, and other systems of law, the *lex talionis*, the principle of exacting compensation, "eye for eye, tooth for tooth", also the infliction of the same penalty on the accuser who failed to prove his case as would have fallen upon the accused if found guilty.

Tort: A wrongful act or omission for which damages can be obtained in a civil court by the person wronged, other than a wrong that is only a breach of contract. The law of tort is mainly concerned with providing compensation for personal injury and property damage caused by negligence.

Totalitarian regime: a system of government in which there is only one political party that has complete power and control over the people.

Akkadian Terms

***andurārum**:* freedom, liberation.

***awātum**:* words or statement. *awāt mīšarim:* the words or pronounces of justice.

awīlum: man.

***ba'irum**:* hunter.

***dīn mātim**:* the judgments of the land.

***dīnum**:* law, judgement, judicial decision, tribunal, legal problem, justice.

***kibsum**:* way of life, or traditional customs.

mīšarum: justice. *dīnāt mīšarim:* acts or judgment of justice; *šar mīšarim*: king of justice.

***muškenum**:* working citizen, craftsman, commoner.

***nārû**:* stele. *narîja:* my stele.

***purussum**:* decisions.

***rabianum**:* governor or headman.

***rēdûm**:* soldier. *rēdû šarrim:* king's soldier.

***rīdum**:* good behaviour.

***šarrum**:* king. *Hammurabi šarrum*: King Hammurabi.

têrtum: omen, oracle, revelation through prophecy.

Hebrew Terms:

The Hebrew terms for law, appear not to designate individual groups of laws that are formally or substantially distinct, but to be used alone or in series for the legal corpus as a whole.

ḥōq* or *ḥuqqâ: statute or ordinance, often in apodictic form, used in priestly writing as established ceremony and cultic obligation; in D almost exclusively in the first part of the corpus of law (4-11), with a parenetic function.

mišpātîm, judgment or judicial decision, often in casuistic form in the Hebrew codes. Its singular form, *mišpāṭ* often stands for the entire judicial procedure, the forensic situation in its widest sense.

tôrâ: law or authoritative instruction. Its corresponding Akkadian term *wâru* means giving orders, instructions. *Tôrâ* originally meant specific individual rulings of instruction, but then developed to include a complex range of phenomena (TODT, vol. XV, 640-43).

***dibrê hattôrâ*:** oral instruction, connecting with the function of prophets, representing a synthesis of the words and commands promulgated by Yahweh. They are more than "law" in a general sense, but the totality of God's instruction.

šeper hattôrâ: referring to written form of authoritative instruction.

šāma: to heed, to obey. Its corresponding Akkadian *šemûm* means to hear, to learn, to give a hearing, to follow, to obey, to understand language. "When *šāma* is constructed with a nonprepositional object, it serves to denote sensory perception, the perception of an audible signal. The meaning is somewhat different when the object of *šāma* is *dābar:* then hearing becomes not the perception of sounds but the recognition of words and their meaning; this recognition engenders a correct relation to the words" (TDOT, vol. XV, p.258).

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